

2602 No. 12373

United States
Court of Appeals
For the Ninth Circuit.

JOHN STOPPELLI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Northern District of California,
Southern Division

No. 12373

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JOHN STOPPELLI,
Appellant,
vs.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

J. W. EHRLICH,

Attorney for Defendant and Appellant,

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San Francisco, California.

FRANK J. HENNESSY,

United States Attorney,

Northern District of California,

Attorney for Plaintiff and Appellee.

Post Office Building,

San Francisco, California.

United States District Court, Northern District of
California, Southern Division
31953

THE UNITED STATES OF AMERICA,

vs.

RAYMOND A. LEEPER, JAMES MARVIN
BALLARD, ANDREW INGOGLIA, PAT-
RICK JOHN McDONOUGH, and JOHN
STOPPELLI.

INDICTMENT

(Violations of Title 26 USCA, §2553 & 2557-
Harrison Narcotic Act; 21 USC §174-Jones-
Miller Act; 18 USC §371-Conspiracy.)

First Count: (26 USC §2553 and §2557, (Harrison
Narcotic Act));

The Grand Jury Charges: That Raymond A.
Leeper, James Marvin Ballard, Andrew Ingoglia,
Patrick John McDonough, and John Stoppelli,
(whose full and true names are, and the full and
true name of each of whom is, other than herein-
above stated, to said Grand Jury unknown, herein-
after called "said defendants"), on or about the
31st day of October, 1948, in the City of Oakland,
County of Alameda, State of California, within said
Division and District, unlawfully did sell, dispense
and distribute, not in or from the original stamped
package, a certain quantity of a derivative and

preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as 12 envelopes, containing approximately 10 ounces and 436 grains of heroin.

Second Count: (Jones-Miller Act, 21 USC §174);

The Grand Jury further charges: That the said defendants, Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, at the time and place mentioned in the first count of this indictment, within said Division and District, fraudulently and knowingly did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as 12 envelopes containing approximately 10 ounces and 436 grains of heroin, and the said heroin had been imported into the United States of America, contrary to law as said defendants Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli then and there knew.

Third Count: (Conspiracy, 18 USC §371);

The Grand Jury further charges: That the said defendants Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, at a time and place to said Grand Jury unknown, did conspire together and with other persons whose names are to said Grand Jury unknown, to sell, dispense and distribute, not in or from the original stamped package, a quantity of a derivative and preparation of mor-

phine, to-wit, heroin, in violations of Sections 2553 and 2557 of Title 26 United States Code, and to conceal and facilitate the concealment and transportation of morphine, to-wit, heroin, which heroin had been imported into the United States of America contrary to law, as said defendants then and there well knew, in violation of Section 174 of Title 21 United States Code; that thereafter and during the existence of said conspiracy one or more of said defendants, hereinafter mentioned by name, in the City of Oakland, County of Alameda, State of California, within said Division and District, did the following acts in furtherance thereof and to effect the objects of the conspiracy aforesaid:

1. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant Raymond A. Leeper had a conversation with George H. White, District Supervisor of the Bureau of Narcotics of the United States Treasury Department, in Room 306 of the Clay Ten Hotel, 1014 Clay Street.

2. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant James Marvin Ballard left the Clay Ten Hotel, 1014 Clay Street, entered a 1941 Cadillac automobile, California license Number 17 K 120, parked in the vicinity of the said Clay Ten Hotel, 1014 Clay Street, and drove the said automobile away from the said vicinity of the said Clay Ten Hotel.

3. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within

said Division and District, the said defendant James Marvin Ballard drove the said 1941 Cadillac automobile, California License Number 17 K 120, to the vicinity of the Clay Ten Hotel, 1014 Clay Street, with the defendants Andrew Ingoglia and Patrick John McDonough as passengers in said automobile.

4. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendants James Marvin Ballard, and Andrew Ingoglia left the said 1941 Cadillac automobile, California License Number 17 K 120, and entered the said Clay Ten Hotel, 1014 Clay Street.

5. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, immediately after the defendants James Marvin Ballard and Andrew Ingoglia left the said Cadillac 1941 automobile, California License Number 17 K 120, and entered the said Clay-Ten Hotel, 1014 Clay Street, the defendant Patrick John McDonough sat in the driver's seat of the said automobile.

6. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the said defendants James Marvin Ballard and Andrew Ingoglia stood in front of the closed door of room 306 of the Clay-Ten Hotel, 1014 Clay Street.

7. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant Raymond

A. Leeper opened the door from the inside of Room 306, at the Clay-Ten Hotel, 1014 Clay Street, and received a package from the defendants James Marvin Ballard and Andrew Ingoglia, who were then and there standing outside of said door.

8. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, immediately after the defendants Raymond A. Leeper received the package from the said defendants James Marvin Ballard and Andrew Ingoglia, the said defendant Raymond A. Leeper shut the door of Room 306 and remained inside of the said Room 306 of the Clay-Ten Hotel, 1014 Clay Street, and the said defendants James Marvin Ballard and Andrew Ingoglia remained in front of the door outside of the said Room 306 for a short period of time.

A True Bill.

/s/ JOS. L. SCOTT,

Foreman.

FRANK J. HENNESSY,

U. S. Attorney.

By /s/ R. B. McMILLAN,

Asst. U. S. Attorney.

Approved as to Form:

/s/ R. B. McMILLAN.

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 24th day of February, in the

year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable George B. Harris,
District Judge.

No. 31953

UNITED STATES OF AMERICA,

vs.

JOHN STOPPELLI.

ARRAIGNMENT AND PLEA

This case came on for arraignment. Joseph Karesh, Esq., Asst. U. S. Atty., for U. S. Defendant was present with his attorney, Jake Ehrlich, Esq. Defendant was arraigned upon the Indictment, stated his true name to be as contained therein, the substance of the charge being stated to defendant and copy of Indictment handed to him. Defendant stated he understood the charge against him. Mr. Ehrlich waived reading of Indictment.

Defendant pleaded "Not Guilty" as to Counts 1, 2 and 3 of Indictment. On motion of Mr. Karesh and with consent of Mr. Ehrlich, ordered case continued to March 1, 1949 to be set for trial on calendar of Hon. Dal M. Lemmon, District Judge.

At A Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 9th day of June, in the year of

our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Dal M. Lemmon,
District Judge.

No. 31953

UNITED STATES OF AMERICA,

vs.

RAYMOND A. LEEPER, JAMES MARVIN
BALLARD, ANDREW INGOGLIA, PAT-
RICK JOHN McDONOUGH and JOHN
STOPPELLI.

ORDER DENYING MOTIONS FOR MISTRIAL
AND FOR JUDGMENT OF ACQUITTAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. W. Harold Greene was sworn and testified for the United States. Mr. Karesh introduced in evidence and filed U. S. Exhibits Nos. 1 to 12 inclusive; 17 to 36 inclusive. The United States then rested its case. Mr. Ehrlich, Mr. Deasy, Mr. Kernes and Mr. Dunning, on behalf of their respective clients, made motions for a mistrial, which said motions were ordered denied. Mr. Ehrlich, Mr. Deasy, Mr. Kernes and Mr. Dunning, on behalf of their respective clients, made motions for judgment of acquittal, which said motions were ordered denied. James Marvin Ballard and Patrick John McDonough were sworn and testified in their own behalf. Defendants James Marvin Bal-

lard and Patrick John McDonough rested. The defendants Raymond A. Leeper, Andrew Ingoglia and John Stoppelli rested. The evidence was there-upon closed. After hearing Mr. Karesh, Mr. Ehrlich, Mr. Deasy, Mr. Kernes and Mr. Dunning, it is Ordered that this case be continued to June 10, 1949 at 10 a.m., and the jury, after being duly admonished, was excused until that time.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find as to the defendants at the bar, as follows:

Raymond A. Leeper guilty on the First Count, guilty on the Second Count, guilty on the Third Count.

James Marvin Ballard guilty on the First Count, guilty on the Second Count, guilty on the Third Count.

Andrew Ingoglia guilty on the First Count, guilty on the Second Count, guilty on the Third Count.

Patrick John McDonough guilty on the First Count, guilty on the Second Count, guilty on the Third Count.

John Stoppelli guilty on the First Count, guilty on the Second Count, guilty on the Third Count.

/s/ G. CHILDRESS,
Foreman.

[Endorsed]: Filed June 13, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant, John Stoppelli, moves the court to grant him a new trial for the following reasons:

1. The court erred in denying the defendant's motion for acquittal made at the conclusion of the case of the government.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The court erred in admitting testimony of the witness W. Harold Greene to which objections were made.

5. The court erred in charging the jury and in refusing to charge the jury as requested.

6. The court erred in denying the defendant's motion for a mistrial.

7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: The only witness against the defendant, John Stoppelli, was W. Harold Greene, a fingerprint expert, who, under questioning by the government and not responsive to any question, made the following statement referring to John Stoppelli's fingerprints:

"We have a national book, every district supervisor in the country, in the Narcotic Bureau, has a

national book published by the Narcotic Bureau, all of the major known——”

Dated June 16, 1949.

/s/ J. W. EHRLICH,

Attorney for Defendant,
John Stoppelli.

[Endorsed]: Filed June 17, 1949.

[Title of District Court and Cause]

NOTICE OF MOTION FOR NEW TRIAL

To Frank W. Hennessy, United States Attorney:

Please take notice that on Thursday, June 23, 1949, John Stoppelli, one of the defendants in the above entitled action, will move the above entitled court in the courtroom of the Honorable Dal M. Lemmon, for its order vacating and setting aside the verdict of the jury heretofore rendered against said John Stoppelli and granting said John Stoppelli a new trial herein.

Dated this 17th day of June, 1949.

/s/ J. W. EHRLICH,

Attorney for Defendant,
John Stoppelli.

[Endorsed]: Filed June 17, 1949.

AFFIDAVIT OF JAMES MARVIN BALLARD

State of California,

City and County of San Francisco—ss:

James Marvin Ballard, being duly sworn on oath deposes and says:

That he is the James Marvin Ballard who appears as one of the defendants in the above entitled action; that after he and the other defendants were sentenced to various terms of imprisonment, and while they were together in the San Francisco County Jail, he had a discussion with the defendant Andrew Ingoglia in the presence of the defendants John Stoppelli, Raymond A. Leeper and Patrick John McDonough concerning the defendant John Stoppelli.

That the defendant Ingoglia said to all those present, to wit, John Stoppelli, Raymond A. Leeper, Patrick John McDonough and James Marvin Ballard, that John Stoppelli had nothing whatever to do with the offenses alleged in the above captioned indictment.

That Ingoglia received the narcotics in bulk from a source which he did not disclose but said it was not Stoppelli.

That Ingoglia never before the trial had seen or known or done any business with said Stoppelli, and that Ingoglia first met Stoppelli at the first calling of this case.

That each of the other defendants present, each for himself said that they had never known, seen, done business with or talked to Stoppelli until they talked to him on the first calling of this case. That your affiant never saw, did business with or knew said Stoppelli until he saw him for the first time during the trial of the above matter.

That the said Ingoglia further said that he received the narcotics in bulk in one package, and

after receipt he cut them with milk-sugar in a residence in San Francisco.

That he Ingoglia purchased the celophane envelopes, and the plain white envelopes, in which the narcotics were packaged, in a store on Market Street in San Francisco.

That Ingoglia received the narcotics more than thirty days prior to the time they were delivered to Leeper.

That Ingoglia knows that the fingerprint on the white envelope was not made by Stoppelli because Stoppelli was not in San Francisco and did not and could not handle the said envelopes; that the narcotics were not purchased from Stoppelli, that Ingoglia has never done any business with Stoppelli and that Stoppelli had nothing to do with the cutting and repackaging of said narcotics.

That each of the other defendants urged Ingoglia to make a statement of the true facts but he, Ingoglia, refused to do so.

That Ingoglia said he did not take the stand to testify because he feared he would incriminate his associates who brought the narcotics to him and who aided him in cutting and repackaging such narcotics.

/s/ JAMES MARVIN BALLARD.

Subscribed and sworn to before me this 30th day of July, 1949.

[Seal] /s/ L. H. CONDON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 8, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF PATRICK JOHN
McDONOUGH

State of California,
City and County of San Francisco—ss:

Patrick John McDonough, being first duly sworn on oath deposes and says:

That he is the Patrick John McDonough who appears as one of the defendants in the above entitled action; that after he and the other defendants were sentenced to various terms of imprisonment, and while they were together in the San Francisco County Jail, he had a discussion with the defendant Andrew Ingoglia in the presence of the defendants John Stoppelli, Raymond A. Leeper and James Marvin Ballard concerning the defendant John Stoppelli.

That the defendant Ingoglia said to all those present, to wit, John Stoppelli, Raymond A. Leeper, Patrick John McDonough and James Marvin Ballard, that John Stoppelli had nothing whatever to do with the offenses alleged in the above captioned indictment.

That Ingoglia received the narcotics in bulk from a source which he did not disclose but said it was not Stoppelli.

That Ingoglia never before the trial had seen or known or done any business with said Stoppelli, and that Ingoglia first met Stoppelli at the first calling of this case.

That each of the other defendants present, each for himself said that they had never known, seen, done business with or talked to Stoppelli until they talked to him on the first calling of this case. That your affiant never saw, did business with or knew said Stoppelli until he saw him for the first time during the trial of the above matter.

That the said Ingoglia further said that he received the narcotics in bulk in one package, and after receipt he cut them with milk-sugar in a residence in San Francisco.

That he, Ingoglia, purchased the celophane envelopes, and the plain white envelopes, in which the narcotics were packaged, in a store on Market Street in San Francisco.

That Ingoglia received the narcotics more than thirty days prior to the time they were delivered to Leeper.

That Ingoglia knows that the fingerprint on the white envelope was not made by Stoppelli because Stoppelli was not in San Francisco and did not and could not handle the said envelopes; that the narcotics were not purchased from Stoppelli, that Ingoglia has never done any business with Stoppelli and that Stoppelli had nothing to do with the cutting and repackaging of said narcotics.

That each of the other defendants urged Ingoglia to make a statement of the true facts but he, Ingoglia, refused to do so.

That Ingoglia said he did not take the stand to testify because he feared he would incriminate his

associates who brought the narcotics to him and who aided him in cutting and repackaging such narcotics.

/s/ PATRICK JOHN
McDONOUGH.

Subscribed and sworn to before me this 30th day of July, 1949.

[Seal] /s/ L. H. CONDON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 8, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF J. W. EHRLICH
State of California,
City and County of San Francisco—ss:

J. W. Ehrlich, being first duly sworn, deposes and says:

That he is an attorney at law duly admitted and licensed to practice his profession in all of the courts of the State of California and in the United States District Court in and for the Northern District of California and that he is the attorney for John Stoppelli, one of the defendants above named.

That after the trial of the above entitled action and after the above named defendants had been sentenced to various terms of imprisonment, while they were together in the San Francisco County Jail, your affiant had a conversation with one An-

drew Ingoglia, one of the defendants above named.

At that time Andrew Ingoglia stated to your affiant that the defendant John Stoppelli had nothing to do with this case, and that said John Stoppelli was unknown to him and to the other defendants; that neither he nor the other defendants ever saw, talked to or did business with the said John Stoppelli; that the fingerprint in question on said envelope could not have been made by John Stoppelli because he, Ingoglia, received the narcotics in bulk in one package and after receipt cut them with milk-sugar in San Francisco; that he, Ingoglia, purchased the celophane envelopes and the plain white envelopes in which the narcotics were packaged in a store on Market Street in San Francisco.

That your affiant urged the said Ingoglia to testify to the facts herein contained, but that he refused to do so on the ground that it would incriminate his associates who delivered the narcotics to him and aided him in cutting and repackaging such narcotics.

/s/ J. W. EHRLICH.

Subscribed and sworn to before me this 30th day of July, 1949.

[Seal] L. H. CONDON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Aug. 8, 1949.

At a Stated Term of the District Court of the
United States for the Northern District of Cali-

fornia, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 8th day of August, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Dal M. Lemmon,
District Judge.

No. 31953

UNITED STATES OF AMERICA

vs.

JOHN STOPPELLI

ORDER GRANTING NEW TRIAL AS TO
COUNT 3 OF INDICTMENT, AND DENY-
ING NEW TRIAL AS TO COUNTS 1 AND
2 OF INDICTMENT; SENTENCE

This case came on for judgment and for hearing of motion for new trial. Joseph Karesh, Esq., Asst. U. S. Atty., for U. S. Defendant was present in custody of U. S. Marshal and with his attorney, J. W. Ehrlich, Esq. Mr. Ehrlich presented and filed three affidavits. Ordered motion for new trial granted as to Count 3 of Indictment, and denied as to Counts 1 and 2 of Indictment. After hearing counsel, Ordered defendant sentenced to imprisonment in a Federal Penitentiary for Five (5) Years on Count 1 of Indictment, and Six (6) Years and fined One Hundred Dollars (\$100.00) on Count 2 of Indictment, said terms of imprisonment to run Concurrently.

Ordered that judgment be entered herein accordingly. Ordered that defendant be granted a stay of execution of judgment for period of one (1) week. Mr. Ehrlich made a motion for release of defendant on bond pending appeal, which motion was ordered submitted. G. Albert Wahl, Probation Officer, was present.

District Court of the United States for the Northern
District of California, Southern Division
No. 31953-L

UNITED STATES OF AMERICA

vs.

JOHN STOPPELLI

JUDGMENT AND COMMITMENT

On this 8th day of August, 1949 came the attorney for the government and defendant appeared in person and with counsel;

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation of Title 26 USC, Sec. 2553 and 2557, (Harrison Narcotic Act), Ct. 1, and (Jones-Miller Act, 21 USC, Sec. 174) Ct. 2, as charged in Counts One and Two of Indictment and the court having asked the defendant whether he

has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years on Count One and Six (6) Years on Count Two of the Indictment and pay a fine to the United States of America in the sum of One Hundred Dollars (\$100.00) on Count Two of the Indictment.

It Is Further Ordered that said terms of imprisonment run Concurrently.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ DAL M. LEMMON,

United States District Judge.

/s/ C. C. EMERSON,

Deputy Clerk.

Filed and entered this 8th day of August, 1949.

C. W. CALBREATH,
Clerk.

In the United States District Court for the Northern
District of California, Southern Division
No. 31953-R

UNITED STATES OF AMERICA

Plaintiff,

vs.

RAYMOND A. LEEPER, JAMES MARVIN
BALLARD, ANDREW INGOGLIA, PAT-
RICK JOHN McDONOUGH and JOHN
STOPPELLI,

Defendants.

NOTICE OF APPEAL

Name and address of appellant—John Stoppelli,
c/o J. W. Ehrlich, 512 DeYoung Bldg., San Fran-
cisco, California.

Name and address of appellant's attorney—J.
W. Ehrlich, 512 DeYoung Bldg., San Francisco,
California.

Offense—First Count: Violation of Title 26 U.
S. Code Annotated, Sections 2553 and 2557 in that
the defendant did unlawfully sell, dispense and
distribute a quantity of heroin. Second Count:
Violation of Title 21 U. S. Code Annotated, Section
24 by concealing and facilitating the concealment
of heroin. Third Count: Violation Title 18 U. S.
Code Annotated, Section 371, charging conspiracy
to sell, distribute and conceal heroin.

Judgments, Orders and Sentence—Denial of Mo-
tion for Mistrial and motion for verdict of acquittal

on June 9th, 1949, verdict of Guilty on June 13, 1949, denial of motion for new trial on Counts 1 and 2 August 8th, 1949, and sentence on Count 1 for five years and sentence on Count 2 of 6 years and \$100.00 fine on Count 2. Motion for new trial granted as to Count 3.

Appellant is presently confined in the County Jail of the City and County of San Francisco, State of California.

I, John Stoppelli, the above named appellant, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the above stated judgments and orders.

Dated this 12th day of August, 1949.

/s/ J. W. EHRLICH,

Attorney for Appellant.

[Endorsed]: Filed Aug. 12, 1949.

In the United States District Court for the Northern
District of California, Southern Division
No. 31953-R

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

JOHN STOPPELLI,
Defendant and Appellant.

AMENDED NOTICE OF APPEAL

Name and address of appellant—John Stoppelli, c/o J. W. Ehrlich, 512 DeYoung Bldg., San Francisco, California.

Name and address of appellant's attorney—J. W. Ehrlich, 512 DeYoung Bldg., San Francisco, California.

Offense—First Count: Violation of Title 26 U. S. Code Annotated, Sections 2553 and 2557 in that the defendant did unlawfully sell, dispense and distribute a quantity of heroin. Second Count: Violation of Title 21 U. S. Code Annotated, Section 174 by concealing and facilitating the concealment of heroin. Third Count: Violation Title 18 U. S. Code Annotated, Section 371, charging conspiracy to sell, distribute and conceal heroin.

Judgments, Orders and Sentence—Denial of motion for mistrial and motion for verdict of acquittal on June 9th, 1949, verdict of guilty on June 13, 1949, and sentence on Count 1 of five years and sentence on Count 2 of 6 years and \$100.00 fine on Count 2. Motion for new trial granted as to Count 3.

Appellant is presently confined in the County Jail of the City and County of San Francisco, State of California.

I, John Stoppelli, the above named appellant, hereby appeals to the United States Circuit Court

of Appeals for the Ninth Circuit from the above stated judgments and orders.

Dated this 15th day of August, 1949.

/s/ J. W. EHRLICH,
Attorney for Appellant.

[Endorsed]: Filed Aug. 15, 1949.

[Title of District Court and Cause.]

PRAECIPE FOR RECORD ON APPEAL

Comes now the defendant and appellant, John Stoppelli, and having filed herein his appeal does hereby designate the following portions of the records, proceedings and evidence to be contained in the record on appeal and requests the Clerk of this Court to so incorporate as follows:

1. Indictment.
2. Minute Order of arraignment of Defendant, John Stoppelli.
3. Plea of not guilty by John Stoppelli.
4. Order of Court denying motions for mistrial and for judgment of acquittal by defendant, John Stoppelli.
5. Verdict of the jury.
6. Reporter's transcript of all oral proceedings taken down by the official court reporter in the above entitled case at all stages of the proceedings in this case from the beginning of the trial thereof on the 7th day of June, 1949 to and including the

denial of motion for a new trial on August 8, 1949.

7. Motion for new trial and notice thereof filed by defendant John Stoppelli.

8. Affidavit of James Marvin Ballard filed in support of motion for new trial.

9. Affidavit of Patrick John McDonough filed in support of motion for new trial.

10. Affidavit of J. W. Ehrlich filed in support of motion for new trial.

11. Order granting new trial as to Count 3 of indictment and denying new trial as to Counts 1 and 2 of indictment.

12. Judgment of the Court as to Defendant John Stoppelli.

13. Notice of Appeal.

14. Amended Notice of Appeal.

15. Praecipe for Record on Appeal.

Dated this 15th day of August, 1949.

/s/ J. W. EHRLICH,

Attorney for Defendant and
Appellant, John Stoppelli.

Receipt of copy acknowledged.

[Endorsed]: Filed Aug. 16, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Indictment.

Minute Order of February 24, 1949—Arraignment and Plea.

Minute Order of June 9, 1949—Order Denying Motion for Mistrial and Motion for Judgment on Acquittal.

Verdict.

Motion for New Trial.

Affidavit of James Marvin Ballard.

Affidavit of Patrick John McDonough.

Affidavit of J. W. Ehrlich.

Minute Order of August 8, 1949—Order Granting New Trial as to Count 3 of the Indictment, and Denying New Trial as to Counts 1 and 2 of the Indictment; Sentence.

Judgment and Commitment.

Notice of Appeal.

Amended Notice of Appeal.

Praecipe for Record on Appeal.

Reporter's Transcripts—Vol. 1, for June 7, 1949;

Vol. 2, for June 8, 1949; Vol. 3, for June 9, 1949;
Vol. 4, for June 13, 1949—Charge of the Court.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court this
19th day of September, A.D. 1949.

C. W. CALBREATH,
Clerk,

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court
of the United States for the Northern District of
California, do hereby certify that the accompanying
document, listed below, is the original Reporter's
Transcript filed in this Court, and that it constitutes
the Supplement to Record on Appeal herein, to wit:

Reporter's Transcript—Vol. 5—for June 13, July
5, and August 8, 1949.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court, this
12th day of October, 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

Filed Oct. 11, 1949.

PAUL P. O'BRIEN,
Clerk.

In the Southern Division of the United States
District Court for the Northern District of
California

Before: Hon. Dal M. Lemmon,
Judge.

No. 31953-L

UNITED STATES OF AMERICA,
Plaintiff,

vs..

RAYMOND A. LEEPER, JAMES MARVIN
BALLARD, ANDREW INGOGLIA, PAT-
RICK JOHN McDONOUGH, and JOHN
STOPPELLI,

Defendants.

REPORTER'S TRANSCRIPT

Tuesday, June 7, 1949

Appearances

For the Government:

JOSEPH KARESH, ESQ.,
Assistant United States Attorney.

For the defendants Leeper and Ballard:

JOSEPH DEASY, ESQ.

For the defendant Ingoglia:

EDMUND DUNNING, ESQ.

For the defendant McDonough:

ROBERT S. KERNES, ESQ.

For the defendant John Stoppelli:

J. W. EHRLICH, ESQ. [1*]

(A jury was duly impaneled and sworn to try the cause.)

Opening Statement On Behalf Of The Government

Mr. Karesh: Ladies and gentlemen of the jury: As his Honor has indicated, this is an indictment in three counts. The first count charges a violation of the Harrison Narcotic Act.

The date of the offense, on or about October 31, 1948, the illegal sale of a quantity of heroin, which is a proscribed drug, a narcotic.

The second count charges a violation of the Jones-Miller Act, which is the illegal possession or the illegal concealment or the facilitation of the concealment of a quantity of heroin, narcotics, approximately ten ounces and 435 grains.

The third count charges a conspiracy to violate either one or both of these Acts. In other words, as his Honor has indicated, it is a violation of law—the conspiracy statute is violated if two or more men agree in a conspiracy to violate the law. In other words, here we have the Harrison Act. One man himself may violate that Act by selling illegal narcotics. If two or more men agree to sell narcotics, both of them have violated not only the Harrison Act, but they commit a conspiracy.

The same way with the Jones-Miller Act. If one man has [2] in his possession and cannot explain away the possession of a quantity of narcotics, that

* Page numbering appearing at top of page of original Reporter's Transcript.

is a violation of the Jones-Miller Act; but if two or more agree to possess or facilitate the concealment or conceal or aid and abet in the possession or concealment of that narcotic, not only are they guilty of a violation of the Jones-Miller Act, but they are likewise guilty of conspiracy to violate this act.

The offenses charged took place in Oakland and in other places. Now, members of the jury, I ask you to bear in mind throughout the course of the presentation of the Government's case that if a man puts in action a criminal force, let's say in New York, in the State of New York, and ultimately the crime is consummated in the State of California, even though the man is in New York, because he set the criminal force loose and the force was consummated or the act was consummated in California, he is guilty of a violation of the law in California.

I will also ask you to bear in mind——

Mr. Deasy: Excuse me, please. I submit to the Court this is not a statement by the United States Attorney of what he expects to prove by his evidence.

The Court: Well, I think he is trying to outline the legal background of it in order that they may understand the evidence as it comes in in the light of the legal background. Proceed.

Mr. Karesh: I would also like to members of the jury to bear in mind, as I know you will, during the course of the presentation [3] of the Government's case, that anyone who aids and abets in

the commission of a crime is as guilty as the person who commits the crime. In other words, if there is a person in the State of New York who sends narcotics to the State of California, and those narcotics are possessed in California and are sold in California, that person who sends the narcotics to California is as guilty as the person who possesses the narcotics in California and who sells the narcotics in California, and is likewise guilty of a criminal conspiracy to violate the Act.

Now, we will go to the date October 31, 1948, mentioned in the indictment. I would call your attention, members of the jury, that the Government is not limited to that date, October 31, 1948. If we can show that any criminal act leading to what occurred on October 31, 1948 occurred within three years of the return of the indictment, which we call the statutory period, and that person started that act three years ago, before October 31, 1948, or, rather, before the return of the indictment he is guilty under the law. I ask you to bear that in mind as we present our case.

We will show you that in Oakland, California, at Tenth and Clay Streets, is the Clay-Ten Hotel. It is a small hotel. And in the Clay-Ten Hotel in Oakland in room 306, there lived on October 31, 1948 and there lived for a considerable period prior to that time the defendant Raymond Leeper, and Raymond Leeper had an automobile, and that automobile becomes extremely [4] significant, registered to his nephew, but of which he was the owner or the

possessor. The automobile will become extremely important in the presentation of the Government's case.

Now, on October 31, 1948, Colonel White, District Supervisor of the Bureau of Narcotics, went with an informer—and we say to you now and we say it without apology at the opening of our case, that the Government is permitted the use of the informer—no prejudice must be shown the Government's case because the Government uses or used an informer. Colonel White, on October 31, 1948, on a Sunday, went with an informer to the Clay-Ten Hotel. The informer went upstairs to room 306. Colonel White went upstairs thereafter to room 306. Outside—there were other agents—outside of the hotel, the Clay-Ten Hotel, were other agents — Agent Bertin, Agent Cass, and Agent Grady.

As Colonel White went up to room 306, but prior to reaching room 306 the defendant James M. Ballard came out of that hotel and entered the Cadillac car of Leeper, by himself, under the surveillance of the agents outside. He was away for a while, for a few minutes, and then James Marvin Ballard, a few minutes later, returned in that automobile, not by himself, we will show, but from the surveillance of the agents we will show that in the car was James Marvin Ballard and Patrick McDonough and the other defendant Andrew Ingoglia. McDonough [5] moved into the driver's seat after Ballard had gotten out of the driver's seat with Ingoglia.

Into the hotel went the defendants James Marvin Ballard and Andrew Ingoglia. In the meantime Colonel White had made arrangements to buy heroin for \$900 an ounce from Leeper. Leeper told him that he was sending out Slim, who is James Marvin Ballard, to bring back the purchaser or the seller. That seller who came back with Ballard was the defendant Andrew Ingoglia.

Bear in mind that McDonough has now moved into the driver's seat outside the hotel still under the surveillance of the Government officers.

Now, what happened in room 306? James Marvin Ballard and Andrew Ingoglia were outside room 306, and we will show you that room 306 is at the end of the long hall, not straight at the end of the long hall, but about a 45-degree angle to the right, as a dead end. In other words, it is not one of the rooms running parallel to the line or to the corridor, it veers off to the right, and this will become extremely important as the Government's case develops.

There was a knock on the door. Colonel White is in the room. The defendant Raymond Leeper sticks his hand through the door and brings in a package. Colonel White looks at the package. Not more than five seconds elapsed. He breaks the package and it appears to be narcotics with 12 envelopes, in [6] through the door, and there standing in front of the door are the defendants Andrew Ingoglia and James Marvin Ballard, who had passed the packages through the door.

We will also show, ladies and gentlemen of the jury, during the course of the trial, that the defendant John Stoppelli—and we will show it by fingerprint evidence, conclusive fingerprint evidence, that a quantity of that heroin in question in that envelope, in one of the envelopes, was handled by the defendant John Stoppelli.

On the theory of law of aiding and abetting, we will show that all of them violated the Harrison Narcotic Act, all of them violated the Jones-Miller Act, and all of them conspired to violate these acts, and we will also ask you to bear in mind during the course of the trial, that the Government does not have to show that John Stoppelli handled all of the narcotics in the envelopes. If he handled the narcotics in one envelope, if he handled one ounce of narcotics, or a half ounce, or 5 grains, it is as though he handled, possessed, concealed, aided and abetted in the concealment and the sale of all the narcotics in all of the envelopes.

And that, then, will be the Government's case. We will prove it beyond a reasonable doubt and to a moral certainty.

The Court: Do counsel for the defense or the defendants wish to reserve the right later on to make their statements to the jury? [7]

Mr. Deasy: Yes, your Honor.

Mr. Ehrlich: Yes, your Honor.

Mr. Dunning: Yes, your Honor.

Mr. Kernes: Yes, your Honor.

Mr. Deasy: On behalf of all the defendants we reserve the opening statement.

At this time, may it please the Court, may we have an order excluding all witnesses from the courtroom with the exception of the witness——

The Court: Yes, you may have such an order excluding all the witnesses except the agent in charge of the case, and the defendants, and the order is that all witnesses, those here under subpoena or otherwise, will leave the courtroom, and I will ask that counsel see that their respective witnesses leave the courtroom.

Mr. Karesh: Mrs. Seeley, you are a witness, you will have to leave. Until we call you, remain outside.

The Court: Will counsel observe those that are in the courtroom? If there are any here who are witnesses, please leave the courtroom and remain outside until called.

Mr. Karesh: Are there any witnesses here for the Government inside the courtroom that have been subpoenaed?

C. E. HUBACH

called as a witness on behalf of the Government; sworn. [8]

Q. (By the Clerk): Will you state your full name to the court and jury?

The Witness: C. E. Hubach.

Direct Examination

By Mr. Karesh:

Q. You are an employee, sir, of the United States of America?

(Testimony of C. E. Hubach.)

A. I am employed by the Internal Revenue Bureau.

Q. Of the United States of America?

A. Yes.

Q. How long have you been so employed?

A. Since 1925.

Q. And in what capacity have you been employed and are now employed by the Government?

A. As a chemist.

Q. As a chemist, do you analyze substances to determine whether they contain narcotics?

A. I do.

Q. Have you made many such analyses in your long service with the Government?

A. Yes, I have made a large number of them.

Q. Have you ever analyzed any substance to determine that it contained heroin? A. Yes.

Q. Is heroin a narcotic? A. It is.

Q. Have you testified in court on more than one occasion? [9] A. Yes, I have.

Q. In narcotic cases? A. Yes.

Q. Have testified in court and identified certain substances, containing heroin? A. Yes.

Q. And what, sir, is your educational background?

A. Oh, I have a degree of Bachelor of Chemistry from Cornell University.

Q. Now, you have brought here a package.

A. Yes.

Q. Do you have it with you?

(Testimony of C. E. Hubach.)

(The witness exhibits package to counsel.)

Q. How long have you had the package with you?

A. I brought this from the laboratory this morning.

Q. How long have you had the package?

A. It was first given to me November 1, 1948.

Q. And by whom was the package and the contents of the package given you?

A. By Agent Cass, of the narcotic office.

Q. Agent Cass, of the Bureau of Narcotics of the San Francisco office? A. Yes.

Q. Now, do you remember the way in which the narcotics were given to you? Were they in envelopes? Describe the physical [10] condition of the narcotics or the package given you by Mr. Cass?

A. They were handed to me in a brown sealed envelope, which I have here, and this envelope contained 12 small glassine or transparent paper envelopes which contained a white powder.

Q. Did you analyze the contents of each of the envelopes, small envelopes? A. I did.

Q. And what did you find as a result of your analysis?

A. I found that each envelope contained heroin hydrochloride.

Q. Heroin hydrochloride is another name for the more commonly used term heroin? A. Yes.

Q. You have already testified that it is a narcotic and a proscribed drug, is that right?

A. Yes.

(Testimony of C. E. Hubach.)

Q. Now, will you tell us the manner in which you made your test?

A. I made a qualitative test to determine it was heroin hydrochloride. Then I made quantitative tests to determine the amount of the heroin present.

Q. What percentage of heroin was in the package? A. The percentage is 80, 80 per cent.

Q. Of heroin? A. Heroin hydrochloride.

Q. Now, what was the balance?

A. The balance is a sugar of some sort, a reducing sugar. [11]

Q. Is milk sugar a reducing sugar?

A. Yes, it is.

Q. And milk sugar is used to cut heroin? That is correct, isn't it?

A. I have seen it used so before.

Mr. Deasy: I am sorry, I didn't get the last part of that answer.

(Answer read.)

Q. (By Mr. Karesh): Now, after you made your analysis what did you do with the heroin?

A. I placed it in another envelope and sealed it and put the envelope in the safe in the laboratory.

Q. And you have had it with you under your seal and in your possession since given you by Agent Cass on November 1, 1948, is that correct?

A. Yes, it has been in the safe and laboratory.

Q. Now, will you break the seal?

(The witness breaks the seal of the envelope.)

Q. Will you take off the contents of the sealed

(Testimony of C. E. Hubach.)

envelope? How many envelopes are there, sir?

A. There are twelve.

Q. And each envelope, you say, contains heroin?

A. Yes.

Q. Now, did you put your initials on each envelope? A. Yes, I did.

Q. Now, what is the measurement or the weight of that envelope [12] that you have in your hand?

A. It contains approximately 365 grains.

Q. Was that after you had taken some out for analysis? A. No, that was prior to that time.

Q. Prior.

Mr. Karesh: May it please your Honor, the envelope containing the 365 grains we will ask that it be marked as U. S. Exhibit 1 for Identification.

The Court: It will be marked for identification.

(The envelope referred to was marked U. S. Exhibit 1 for Identification.)

Q. (By Mr. Karesh): Take the next envelope and tell me how many grains is in that.

A. 380 grains.

Mr. Karesh: The envelope containing 380 grains, your Honor, we will ask be marked next in order for identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 2 for Identification.)

Q. (By Mr. Karesh): You have another envelope in your hands, sir, how many grains?

A. 384.

(Testimony of C. E. Hubach.)

Mr. Karesh: The envelope, may it please your Honor, containing 384 grains of heroin we ask be marked U. S. Exhibit 3 for Identification. [13]

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 3 for Identification.)

Q. (By Mr. Karesh): The next envelope you have in your hand, how many grains?

A. 394.

Mr. Karesh: The envelope, your Honor, containing 394 grains we ask be marked U. S. Exhibit 4 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 4 for Identification.)

Mr. Karesh: The envelope you now have in your hand, how many grains? A. 397.

Q. How much? A. 397.

Mr. Karesh: 397 grains of heroin. We ask this be marked U. S. Exhibit 5, your Honor please, for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 5 for Identification.)

Q. (By Mr. Karesh): The envelope you have in your hand contains how many grains of heroin?

A. 397.

Mr. Karesh: 397 grains. We will ask that this envelope, your Honor, be marked U. S. Exhibit 6 for Identification. [14]

The Court: So ordered.

(Testimony of C. E. Hubach.)

(The envelope referred to was marked U. S. Exhibit 6 for Identification.)

Q. (By Mr. Karesh): The envelope, sir, which you have in your hand now, contains how many grains of heroin? A. 401.

Mr. Karesh: The envelope, may it please your Honor, containing 401 grains we ask be marked U. S. Exhibit 7 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 7 for Identification.)

Q. (By Mr. Karesh): The envelope you have in your hand contains how many grains of heroin, sir? A. 412.

Mr. Karesh: This envelope containing 412 grains, if your Honor please, we ask be marked U. S. Exhibit 8 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 8 for Identification.)

Q. (By Mr. Karesh): The envelope you have in your hand, sir, contains how many grains of heroin? A. 415.

Mr. Karesh: This envelope with this 415 grains, your Honor, we ask be marked U. S. Exhibit 9 for Identification. [15]

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 9 for Identification.)

Q. (By Mr. Karesh): The envelope you now

(Testimony of C. E. Hubach.)

have in your hand, sir, contains how many grains?

A. 415.

Mr. Karesh: This envelope containing 415 grains we ask be marked U. S. Exhibit 10 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 10 for Identification.)

Q. (By Mr. Karesh): The envelope, sir, that you hold in your hand now, how many grains?

A. 424 grains.

Q. How many? A. 424 grains.

Mr. Karesh: We ask that the envelope, if your Honor please, containing 424 grains of heroin, be marked U. S. Exhibit 11 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 11 for Identification.)

Q. (By Mr. Karesh): The envelope you now hold in your hand, sir, contains how many grains?

A. 427. [16]

Mr. Karesh: We ask that this envelope, may it please your Honor, with 427 grains, be marked U. S. Exhibit 12 for Identification.

The Court: So ordered.

(The envelope referred to was marked U. S. Exhibit 12 for Identification.)

Q. (By Mr. Karesh): Now, I notice inside there is some waxed paper. Was that paper furnished you by the—will you look at it—just take

(Testimony of C. E. Hubach.)

the envelope so we won't spill any of it—was the waxed paper given you by the agent, or what?

A. This is the way it was delivered to me, as is.

Q. Those envelopes?

A. Those waxed envelopes.

Q. In the waxed envelopes inside these white envelopes, is that correct? A. Yes.

Q. And your initials appear—what are your initials? A. C.E.H.

Q. Your initials appear on each envelope?

A. Yes.

Q. U. S. Exhibits 1 to 12 for Identification. How many grains to an ounce? A. 487½.

Q. 487½? A. That is avoirdupois ounces.

Mr. Karesh: That is all of this witness.

Cross-Examination

By Mr. Deasy:

Q. Mr. Hubach, approximately what time was it on November the 1st that you received this package from the agent? A. I don't recall.

Q. Would it be in the morning or in the afternoon? A. I don't remember that.

Q. I see. And where is the container that it was in originally placed, sir, when they gave it to you?

A. Right here.

Q. May I see it, please?

(The witness produces envelope.)

Q. I see that you have two joined here together. Was it in one container or two containers?

A. It was in one container.

(Testimony of C. E. Hubach.)

Q. I see. And what was the total weight of the one to twelve exhibits that you have given to us, in grains, if you recall?

A. It was almost an even eleven ounces, just a few grains short of 11 ounces.

Q. Of 11 ounces? A. Yes.

Q. And each one of these white envelopes which have been marked as exhibits were handled by you as you took the narcotics out, is that correct? [18]

A. Yes.

Q. And the waxed paper was also handled by you, is that correct? A. Yes.

Mr. Deasy: Thank you very much. I have no further questions.

Mr. Ehrlich: No questions.

Mr. Dunning: No questions.

Mr. Kernes: No questions.

Mr. Karesh: May it please your Honor, we have called for Mr. Cass. He is an agent. He recently broke his arm. We did not think we would get started so quickly. He will be here at eleven o'clock, if we could have a recess until then.

The Court: Ladies and gentlemen of the jury, you are admonished not to discuss the facts of the case amongst yourselves or with anyone else, or permit them to be discussed in your presence or hearing. You are further admonished not to form or express any opinion upon the merits of the case until it is finally submitted to the jury.

(Recess.) [19]

RALPH KLINE

was called as a witness on behalf of the United States, and being first duly sworn, testified as follows:

Q. (By the Clerk): Will you state your name to the Court and jury?

The Witness: My name is Ralph Kline, Special Investigator of the Alcohol Tax Unit.

Direct Examination

By Mr. Karesh:

Q. Mr. Kline, you are an employee of the Federal government? A. Yes, sir.

Q. In what capacity are you employed?

A. Special investigator.

Q. For what? A. Of the Alcohol Tax Unit.

Q. How long have you been employed by the Alcohol Tax Unit as a special investigator?

A. As special investigator, approximately two years.

Q. Were you with the Government before that time? A. Yes, sir.

Q. For how long? A. Two years.

Q. In what capacity?

A. Deputy United States Marshal.

Q. Your duties require you to take photographs?

A. Yes, sir.

Mr. Karesh: Counsel, have you seen these photographs?

Mr. Ehrlich: No.

(The photographs referred to were thereupon handed to counsel for defense.)

(Testimony of Ralph Kline.)

Q. (By Mr. Karesh): This picture which I show you of the Hotel Clay-Ten—did you take that picture? A. Yes, sir.

Q. When? A. On June 1.

Q. 1949? A. Yes, sir.

Q. Clay-Ten Hotel is at the corner of Tenth and Clay, facing Clay; that is right, isn't it?

A. That is right, yes, sir.

Q. That is a full view of the hotel?

A. Yes, sir.

Mr. Karesh: We will ask that this be received for illustrative purposes, Your Honor.

The Court: It may be received.

(The photograph referred to was thereupon received in evidence and marked U. S. Exhibit No. 13.)

Q. (By Mr. Karesh): This picture which I show you, sir, did you likewise take it?

A. Yes, sir. [21]

Q. When? A. On the same day, June 1st.

Q. 1949? A. 1949.

Q. Is that the Clay-Ten Hotel?

A. Yes, sir.

Q. What does that photograph represent?

A. This is looking down the hall from the elevator?

Q. Is it looking in the direction of room 306?

A. Yes, sir.

Q. Is room 306 straight down the hall? Or does it veer?

(Testimony of Ralph Kline.)

A. It veers a slight bit to the right.

Q. This is just a part view of the hall, is that right, looking toward 306 or in the direction of 306?

A. Yes.

Mr. Karesh: We will ask that this be received for illustrative purposes, Your Honor, next in order.

The Court: It may be received.

(The photograph referred to was thereupon received in evidence and marked U. S. Exhibit No. 14.)

Q. (By Mr. Karesh): Did you take this photograph which I show you, sir? A. Yes, sir.

Q. When? A. June 1, 1949. [22]

Q. What does that represent?

A. This represents a view of the hall looking in the same direction as that other photograph, but from a position nearer the elevator, farther down the hall. It is a complete view of the hall.

Q. In other words, this photograph, U. S. Exhibit No. 14, represents only part of the hall?

A. That is right, sir.

Q. And that represents the entire length of the hall? A. Yes, sir.

Q. Where did you take that picture, sir? Where were you stationed when you took the picture?

A. I was as far back in the hall as I could get, near the elevator.

Q. You say that room 306 veers to the right of that picture? A. Yes, sir.

Mr. Karesh: We will ask this be received, Your Honor, for illustrative purposes.

(Testimony of Ralph Kline.)

The Court: Received.

(The photograph referred to was thereupon received in evidence and marked U. S. Exhibit No. 15.)

Mr. Karesh: May we at this time pass them out to the jury, Your Honor?

The Court: You may.

(Thereupon U. S. Exhibits 13, 14 and 15 were passed to the [23] jury.)

The Court: You may continue with the questioning.

Mr. Karesh: We are through with this witness.

Mr. Deasy: I have some questions, Your Honor, but I need the exhibits.

The Court: Very well.

Cross-Examination

By Mr. Deasy:

Q. Calling your attention, Mr. Kline, to Government's Exhibit No. 13, which is a picture of the Clay-Ten Hotel, roughly speaking, Clay Street runs north and south, does it not?

A. I am not sure. I think it does, sir.

Q. Assume for the purpose of this discussion that it does run north and south. On which side of the street was your camera when you took Plaintiff's Exhibit 13? The east or the west?

A. The camera was on the east side of the street, in a second story window on the southeast corner.

Q. I am going to call your attention, Mr. Kline,

(Testimony of Ralph Kline.)

to Government's Exhibit 14, and I am going to ask you if room 306 appears in that picture.

A. No, sir, it does not.

Q. Room 306 is beyond the corner that is shown there in the extreme easterly end of the picture; that would be the extreme easterly end, would it not? I will reframe the question and put it this way: It would be in the extreme easterly end of the hallway [24] that you took the picture?

A. Well, sir, I am not familiar with the directions to the end of the hallway.

Q. Clay Street runs north and south and this hallway runs at a right angle to Clay Street, does it not? A. I am not certain, sir.

Q. But room 306 does not appear in that picture?

A. The very edge of the door frame appears in the picture.

Q. Will you just point that out, please?

A. Right there (indicating).

Q. That would be that white line that seems to run in conformity with the other white strips, is that right, Mr. Kline?

A. Yes, you can see the door jamb.

Q. Calling your attention to Plaintiff's Exhibit No. 15, room 306 does not appear in that picture either, does it? A. No, sir.

Q. Approximately how long were you on the premises of the Clay-Ten Hotel when you took these pictures on the first of June?

(Testimony of Ralph Kline.)

A. I would say about an hour.

Q. Approximately how long were you in the vicinity of room 306 on the occasion that you took those pictures?

A. Oh, approximately ten minutes.

Q. Again calling your attention to Government's Exhibit No. 14, at this edge, do you know what is back there? Is that a solid wall or does that walkway that you see continue down there? [25]

A. It continues on for ten feet or so and terminates at the door, at the other end of a very short hall.

Q. Along this corridor of that very short hall, are there other rooms, did you notice?

A. To my knowledge, there was a room at the extreme end, either a broom closet or lavatory to the left looking down the hall. That is all.

Q. Excuse me. I do not mean to interrupt you.

A. That is all, I am sure.

Q. As you were going away from Room 306 down this little hall that you described as being about ten feet long, you noticed what appeared to be a lavatory or broom closet, is that correct?

A. Yes, sir.

Q. Would that be to your left as you were going away from Room 306 or to your right?

A. It would be to the left looking down the hall. I never went down the hall, sir. I turned and came back through this hall.

Q. As you are looking down the hall, you are

(Testimony of Ralph Kline.)

looking away from Room 306? A. Yes, sir.

Q. Then it would be to your left, and you were going away from Room 306?

A. That is right.

Q. Approximately how much distance in feet is there between this wall, sir, which appears in Government's Exhibit 14, and [26] the opposite wall, which starts at the beginning of this little ten-foot corridor which you spoke about?

A. I did not measure it, sir.

Q. Can you give me your best approximation, if you can?

A. I would say approximately five feet.

Mr. Deasy: Thank you very much. I have no further questions.

The Court: Any further questions from defense counsel?

(No other defense counsel indicated a desire to question the witness.)

Redirect Examination

By Mr. Karesh:

Q. Some mention was made of a bathroom or lavatory by counsel for one of the defendants. This picture I show you, can you identify it and tell us where it was taken from?

A. It was taken from inside Room 306 looking down the small hall, the hall that we have spoken of.

Q. I did not quite hear you. What did you say?

A. That is looking from Room 306 directly towards the end of the hall, and the lavatory and broom closet I mentioned.

(Testimony of Ralph Kline.)

Q. This was taken inside Mr. Leeper's room?

A. Yes, sir.

Q. And this hall represents the hall we spoke about from the main hall that veers to the right?

A. Yes, sir.

Q. Directly across you see that lavatory? [27]

A. Yes, sir.

Q. That lavatory, of course, was not inside any room; it is a hall lavatory, is that right?

A. Yes, sir.

Mr. Karesh: We will ask that this be received in evidence, if Your Honor please, for illustrative purposes.

The Court: It may be received.

(The photograph referred to was thereupon received in evidence and marked United States Exhibit No. 16.)

Mr. Karesh: May I show this to the jury, Your Honor?

The Court: Very well.

Mr. Karesh: Any other questions?

Recross-Examination

By Mr. Deasy:

Q. Approximately how far inside Room 306 were you when you took the picture that is portrayed in Government's Exhibit No. 16?

A. Is this the exhibit the jury has now?

Q. That is correct.

A. I was approximately ten feet—about ten feet inside of the room where I took the picture.

(Testimony of Ralph Kline.)

Mr. Karesh: Thank you very much. I have no further questions.

Mr. James Eagan. [28]

JAMES F. EAGAN

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

The Clerk: Will you state your name?

A. James F. Eagan.

Direct Examination

By Mr. Karesh:

Q. Mr. Eagan, you are a Deputy United States Marshal for the Northern District of California?

A. I am.

Q. You are assigned to the San Francisco office?

A. Yes.

Q. You are the Chief Deputy in charge of the criminal division of the Marshal's Office, is that right?

A. Yes.

Q. One of your duties is the taking of fingerprints, is that correct?

A. Yes.

Q. Did you take the fingerprints of John Stoppelli?

A. I did.

Q. Do you recognize Mr. Stoppelli in the courtroom?

A. No, I do not believe I do.

Q. But you took the prints of John Stoppelli. Is that the prints?

A. That is the prints.

(Testimony of James F. Eagan.)

Q. When did you take them? [29]

A. February 24. It says "1948" here.

Q. Were they taken in 1948 or were they taken on February 24, 1949? A. 1949.

Q. Do you have an independent record of that that reflects the true date of the taking of the fingerprints?

A. The two dates on the front in my handwriting in 1948; on the back is typewritten 1949.

Q. You do have a notebook, have you not, in which you put down the date on which these fingerprints were taken? A. Yes.

Q. Where is the notebook, Mr. Eagan?

A. It is there (indicating).

Q. Where? A. At the end of the desk.

The Court: Do counsel for the defense wish to see the book?

Mr. Ehrlich: No. If Mr. Eagan says he took those on that particular date, that is agreeable.

Q. (By Mr. Karesh): That reflects John Stoppelli, February 24, 1949, is that correct?

A. Yes.

Q. Do you know who arrested John Stoppelli or did he surrender? A. He surrendered.

Q. Into your office? Did the counsel bring him in, Mr. Ehrlich, do you remember? [30]

A. I haven't a good recollection of that.

Q. You do not know one way or the other?

A. I do not.

Mr. Ehrlich: I will stipulate, Mr. Karesh, that he surrendered voluntarily on the date in question.

(Testimony of James F. Eagan.)

Mr. Karesh: By voluntarily you mean he was on bond to appear in San Francisco and we brought him in?

Mr. Ehrlich: He came here from New York.

Mr. Karesh: Under bond.

Mr. Ehrlich: He came voluntarily. He placed bond in New York and came here at his own expense.

Mr. Karesh: By Stoppelli you mean your client?

Mr. Ehrlich: I mean the defendant Stoppelli.

Mr. Karesh: May we ask that this print card be marked for identification, Your Honor?

The Court: It may be marked for identification.

(The fingerprint card referred to was thereupon marked United States Exhibit No. 17 for identification.)

Mr. Karesh: That is all.

Mr. Ehrlich: That is all.

The Court: That will be all.

C. T. CASS

was called as a witness on behalf of the United States, and being first duly sworn, testified as follows: [31]

The Clerk: What is your full name?

A. C. T. Cass.

Direct Examination

By Mr. Karesh:

(Testimony of C. T. Cass.)

Q. Mr. Cass, you are an agent of the Bureau of Narcotics? A. Yes, sir.

Q. How long have you been an agent?

A. 23 years.

Q. You are assigned to the San Francisco office?

A. Yes, sir.

Q. Calling your attention to October 31, 1948, were you in the vicinity of the Clay-Ten Hotel at Tenth and Clay Streets, Oakland?

A. Yes, sir.

Q. Did you go over there by yourself?

A. I was accompanied by Agent Bertin and Agent Grady, Agent Coffill, and District Supervisor Mr. White.

Q. Did you go in the same car with Mr. White?

A. No, I drove a different car than Mr. White.

Q. On that date did you receive a certain package from District Supervisor White?

A. At about 6:00 o'clock in the evening, October 31, when we returned from Oakland, Mr. White delivered to me a white paper sack containing some envelopes, white envelopes.

Q. Are you sure it was a white paper sack?

A. Manila colored sack. [32]

Q. Look in this envelope or in that package, and tell me, do you identify what is in there?

A. This is the sack.

Q. What was inside this paper sack when Agent White turned it over to you?

(Testimony of C. T. Cass.)

A. Some white, I would say, regular, ordinary letter envelopes.

Q. Was this envelope in this condition at the time you received it or has the envelope been treated for prints?

A. The envelope has been treated for prints.

Q. This bag, rather.

A. The sack wasn't torn up like this. It was a regular sack. It was not discolored like this.

Q. What was inside this paper sack on which you put your initials?

A. There were white letter envelopes.

Q. What was in the white envelopes?

A. There was a white substance.

Q. A white substance?

A. Contained in cellophane. It was first an envelope, and in that envelope there was a cellophane bag, and in that cellophane bag there was a white substance, powder.

Q. In other words, first there was this big bag, and inside the bag some white envelopes?

A. Yes.

Q. How many envelopes were there?

A. I can't recall now. [33]

Q. Did you put your initial on each envelope?

A. I did.

Q. Inside each envelope there were some cellophane bags like this? A. That is correct.

Q. In that condition or has that been treated?

A. This has been treated. This is all spotted, spotted and wrinkled.

(Testimony of C. T. Cass.)

Q. And in each one of the cellophane bags there was a white substance? A. White powder.

Q. What did you do with the bags? Did you empty the heroin from the bags?

A. On the morning of November 31st——

Q. What date did you say?

A. The morning of November 1st, I took the paper sack and the envelopes out of the bag, I put on some rubber gloves, I opened the packages, I removed the contents, and put them in a different envelope and turned this and the paper envelopes, after initialing them, over to Mr. Grady, who was present at that time.

Q. In other words, you took the white powder out of the cellophane envelope and you took the envelopes in which the cellophane was, and you took this bag and gave all that to Mr. Grady?

A. Yes.

Q. And you put the powder, you say, in other white envelopes? [34] A. Yes.

Q. What did you do with the powder you put in the white envelopes?

A. Put it in a package and took it to Mr. Lovett, the chemist, downstairs.

Q. You took it down to the United States Chemist in San Francisco? A. The chemist.

The Court: November 1st you did this?

A. Yes, sir, the next morning.

Q. (By Mr. Karesh): On these white envelopes that you turned over to the chemist, did you put

(Testimony of C. T. Cass.)

your initials, Mr. Cass? A. Yes.

Q. Is this one of the envelopes that you took over to the chemist?

A. Yes, I weighed them and put my initials and the date.

Q. Your initials are on U. S. Exhibit 1 for identification. This is U. S. Exhibit 2 for identification. Give me back the other one. Hold the second one. You put your initials on that before you sent it over to the chemist? A. Yes, sir.

Q. And you turned it over to the chemist, is that right? A. Yes, sir.

Q. Are your initials on U. S. Exhibit 3 for identification? A. Yes, sir. [35]

Q. You turned that over to the chemist on November 1st? A. Yes, sir.

Q. U. S. Exhibit 4 for identification, with its contents, did you turn that over to the chemist?

A. Yes, sir.

Q. With your initials on that package?

A. Yes.

Q. When I said turn the envelopes, I mentioned U. S. Exhibits 1, 2 and 3 for identification—you turned the envelopes plus the contents over to the chemist? A. That is correct.

Q. U. S. Exhibit No. 5 for identification, you turned that and its contents over to the chemist on November 1st? A. Yes, sir.

Q. U. S. Exhibit 6 for identification with its contents, did you turn it over to the chemist on

(Testimony of C. T. Cass.)

November 1st? A. I did, yes, sir.

Q. Marked your initials on it?

A. Yes, sir.

Q. U. S. Exhibit 7 for identification, with its contents, did you turn that over to the chemist?

A. Yes, sir.

Q. November 1st?

A. November 1st. My initials are in the corner.

Q. United States Exhibit 8 for identification with its contents, [36] did you turn that over to the chemist on November 1, 1948?

A. Yes, sir. My initials are there.

Q. United States Exhibit 9 for identification, did you turn that and its contents over to the chemist on November 1, 1948?

A. Yes, sir, my initials are there.

Q. U. S. Exhibit 10 for identification, did you turn that over on November 1st, 1948, with its contents to the chemist? A. Yes, sir.

Q. Did you mark your initials on it?

A. They are right there.

Q. Initialed C. T. C.? A. Yes, sir.

Q. U. S. Exhibit 11 for identification, did you turn that over to the chemist on November 1, 1948, with its contents?

A. Yes, sir, there are my initials, C. T. C.

Q. U. S. Exhibit 12 for identification, with its contents, did you turn that over to the chemist on November 1, 1948?

A. Yes, my initials are there.

(Testimony of C. T. Cass.)

Q. I notice in each one of these envelopes, U. S. Exhibit 1 through 12 for identification, that there is a cellophane wrapper or bag.

A. Yes, sir, I got the bags and I transposed over the one envelope, weighed it, and at that time I turned the two containers and the brown paper bag over to Agent Grady.

Q. In other words, this bag and this cellophane bag—this [37] envelope and this cellophane bag are not the originals or cellophane bags that you received from Supervisor White? A. No.

Q. In other words, you emptied this white powder from the original containers and put it in the cellophane bag inside the envelope?

A. I did.

Q. Twelve of them, and turned it over to the chemist? A. Yes, sir.

Q. All on November 1, 1948, and all contained, you say, the white powder? A. Yes, sir.

Q. You have already identified this paper sack. You say you received it from Col. White and your initials "C. T. C." are on it, is that right?

A. Yes, sir.

Mr. Karesh: We will ask this be marked for identification, Your Honor, next in order.

The Court: It may be marked.

(The sack referred to was thereupon marked U. S. Exhibit No. 18 for identification.)

Q. (By Mr. Karesh): Look in this envelope and tell me what is in there, and if you have ever

(Testimony of C. T. Cass.)

seen the contents before. I know it is rather difficult with your hand like that.

A. This one here—I can see my initials on that. That is one [38] of the containers that was in the original package.

Q. In other words, you have twelve of these bags, is that right?

A. Some of them you have to get in the light to see the initials.

Q. How many of them do you have there, Mr. Cass? Just count them. We will look at them later.

A. Eleven.

Q. Is there another one in there?

A. Yes, twelve.

Q. Each one of these cellophane packages contained white powder, each one came from an envelope, a larger envelope, which came from the paper bag which you got from Supervisor White, is that correct?

A. Some of them I can distinguish my initials on. I can see my initials there but it would take time.

Q. But they were all similar?

A. Yes, these are all similar. Some I see my initials on; some it will take time.

Q. But you received these from Supervisor White?

A. Yes.

Mr. Karesh: We will ask that all these envelopes be marked as one exhibit for identification.

The Court: So marked.

(Testimony of C. T. Cass.)

(The envelopes referred to were thereupon marked United States Exhibit No. 19 for identification.)

Q. (By Mr. Karesh): Do you recognize those envelopes? [39]

A. Yes, sir, that one has my initials.

Q. I can't hear you and I do not think the jury can hear you. Go ahead.

A. That is my initials. That is one of the envelopes.

Q. Let us take them one at a time, Mr. Cass. Do you recognize this envelope which I show you?

A. Yes. It has my initials on it.

Q. What is that envelope?

A. That is one of the original containers, the envelopes that contained the cellophane bag that was in the brown paper.

Q. With the heroin inside the brown paper bag; did you mark your initials on it?

A. Yes, sir, right here.

Q. Was it in that condition when you received it or was it a white envelope?

A. It was a white envelope. This was from treating it with chemicals.

Q. To determine prints, is that right?

A. Yes, sir.

Mr. Deasy: Mr. Karesh, you are discussing something which has not been marked as yet, is that correct?

Mr. Karesh: We have not marked these as yet.

(Testimony of C. T. Cass.)

We will mark them at one time.

Mr. Deasy: We can't see them from here. Just tell us and we would appreciate it. [40]

Mr. Karesh: I am sorry, counsel.

Q. I notice a piece of paper torn from here. Is that the condition in which you received the envelope from Col. White? Were they sealed or what?

A. No, that is where it was torn open in opening them.

Q. Who opened them? A. I opened them.

Q. When you received the envelope with its contents, was that envelope sealed?

A. Yes, sir.

Q. And you broke it open?

A. I tore the corner open and took the contents out. It being wet, the glue went back in position again.

Mr. Karesh: We will ask that this envelope be marked next in order for identification.

The Court: So ordered.

(The envelope referred to was thereupon marked United States Exhibit No. 20 for identification.)

Q. (By Mr. Karesh): Let us look at this envelope which I am showing you.

Am I in your way?

Mr. Deasy: You referring to the envelopes?

Mr. Karesh: Yes. If I do not stand in your way, I am in the jury.

(Testimony of C. T. Cass.)

The Witness: These are my initials (indicating). It is [41] dated 11/1/48.

Q. Did you receive that under the same circumstances as you got the envelope that I just offered and which was received for identification?

A. Yes, sir.

Q. For the record, just say what happened. What does it represent?

A. This is one of the envelopes that were in that paper bag, that I removed the contents and turned this envelope over to Agent Grady.

Q. You received this from Col. White on what day?

A. On October 31, 1948, at about 6:00 p.m.

Q. Six in the evening? A. Yes.

Mr. Karesh: May this be marked for identification, Your Honor?

The Court: Yes.

(The envelope referred to was thereupon marked United States Exhibit No. 21 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, from whom did you receive it and what was in it?

A. This is envelope No. 5 that was in that brown paper bag turned over to me by District Supervisor White, and which contained a brown substance. I removed the brown substance and turned this envelope over to Agent Grady. [42]

Q. Brown or white substance?

(Testimony of C. T. Cass.)

A. Brown and white, a cross between white and brown.

Q. Mostly white?

A. It is mostly white, yes.

Q. It is a white powder?

A. I would say it is white. Some of it is brown, sometimes white.

Mr. Karesh: We will ask that this be marked next in order.

(The envelope referred to was thereupon marked United States Exhibit No. 22 for identification.)

Q. (By Mr. Karesh): This envelope that I show you, from whom did you get it, what did it contain, if anything, and when did you get it?

A. This is an envelope marked "C. T. C., 11/1/48." This is another envelope I received from Mr. White, from which I removed the contents, a whitish powder, and turned it over to Agent Grady.

Mr. Karesh: We will ask that this be marked for identification.

(The envelope referred to was thereupon marked United States Exhibit No. 23 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, from whom did you receive it, when, and what did it contain, if anything?

A. This envelope, Envelope No. 9, "C. T. C.," this is one of the envelopes that I also received from Mr. White, which contained [43] a powder in it,

(Testimony of C. T. Cass.)

which I removed and turned this container over to Agent Grady.

Q. It came out of that paper sack, right?

A. Yes.

Mr. Karesh: May this be marked for identification?

The Court: It may.

(The envelope referred to was thereupon marked United States Exhibit No. 24 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, from whom did you get it, when, and what was in it?

A. This is another envelope with my initials, the date which I received——

Q. What date?

A. November 1, 1948.

Q. Go ahead.

A. Which I received from District Supervisor White, and which contained the cellophane bag.

Q. With the powder?

A. Whitish powder, which I removed and turned this container over to Agent Grady.

Mr. Karesh: May this be marked next for identification, Your Honor?

The Court: Yes.

(The envelope referred to was thereupon marked United States Exhibit No. 25 for identification.) [44]

Q. (By Mr. Karesh): This envelope which I

(Testimony of C. T. Cass.)

show you, Mr. Cass, from whom did you receive it, when, what was in it, and what did you do with it?

A. This is my initials, dated 11/1/48, No. 6. It is among the envelopes I received from District Supervisor White, and from which I removed the contents.

Q. The powder?

A. The powder, and turned over to Agent Grady.

Mr. Karesh: We ask this be marked for identification, Your Honor, next in order.

The Court: So ordered.

(The envelope referred to was thereupon marked United States Exhibit No. 26 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, from whom did you receive it, when, and what was in it, and what did you do with it?

A. This envelope is marked with my initials, No. 12, 11/1/48, was among those that I received from District Supervisor White, from which I removed the powder, placed it in another container and turned this container, the original container, over to Agent Grady.

Q. That was on November 1, 1948?

A. November 1, 1948.

Mr. Karesh: May this be marked next for identification, Your Honor? [45]

The Court: So ordered.

(The envelope referred to was thereupon

(Testimony of C. T. Cass.)

marked United States Exhibit No. 27 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, from whom did you receive it, when, what was in it, and what did you do with it after you saw it? Do you recognize that?

A. It is all blurred here. The number is there—

Q. Is the number in your handwriting? Would you say that you turned that envelope over to Mr. Grady?

A. I can't say because it is too blurred.

Q. You say it is too blurred?

A. If I had a magnifying glass, but as it is now, I can't tell.

Q. It has other initials on it. Do you recognize those initials?

A. I recognize the other initials, yes.

Q. Whose initials are they?

A. William H. Grady.

Q. W.H.G.?

A. Yes. That is, this here could possibly be it, but I can't say.

Q. You say it could possibly be yours?

A. Yes.

Q. You do not know until you have looked under a magnifying glass? A. No. [46]

Q. Did you put your initials on all the envelopes?

A. Yes, I did.

Q. How many envelopes did you get from Col. White?

(Testimony of C. T. Cass.)

A. I don't recall now whether it was twelve, eleven or twelve. I don't recall.

Mr. Karesh: We will ask this be marked for identification next in order, Your Honor.

(The envelope referred to was thereupon marked United States Exhibit No. 28 for identification.)

Q. (By Mr. Karesh): This envelope which I show you, can you identify that and tell me from whom you got it, when, and what did you do with that?

A. This is marked 7, 11/1/48, with my initials, "C.T.C." This is an envelope from which I removed the powder and turned this original container over to Agent Grady.

Mr. Karesh: We will ask this be marked for identification next in order, Your Honor.

The Court: So ordered.

(The envelope referred to was thereupon marked United States Exhibit No. 29 for identification.)

Q. (By Mr. Karesh): This envelope that I show you, from whom did you receive it, when, what did you do with it, and what was in it?

A. This is an envelope marked No. 10, C.T.C., 11/1/48. This is an envelope from which I removed the contents powder, and [47] turned this original container over to Agent Grady.

Mr. Karesh: We will ask that this be marked next in order for identification, Your Honor?

The Court: So ordered.

(Testimony of C. T. Cass.)

(The envelope referred to was thereupon marked United States Exhibit No. 30 for identification.)

Q. (By Mr. Karesh): Can you identify this envelope which I show you, Mr. Cass? Tell me if you can, from whom you got it, what was in it, if anything, what did you do with it?

A. This is marked No. 8, C.T.C., 11/1/48. This is an envelope that contained a whitish substance and which I removed and turned over to Agent Grady for further investigation.

Mr. Karesh: I will ask this be marked next in order for identification.

The Court: So ordered.

(The envelope referred to was thereupon marked United States Exhibit No. 31 for identification.)

Q. (By Mr. Karesh): Let me get this straight for the sake of clarification, Mr. Cass: On November 1, 1948, District Supervisor White gave you a paper bag. Inside the paper bag were twelve envelopes, and inside the envelopes were twelve cellophane bags, and inside the twelve cellophane bags was the white powder, is that right? A. No.

Q. Explain. [48]

A. It was October 31.

Q. I mean October 31. Pardon me. With the exception of the date, that is what happened?

A. Yes, sir.

Q. Then what did you do on November 1, 1948?

(Testimony of C. T. Cass.)

Am I correct in this, that you emptied the contents of the cellophane bag and put them in other cellophane wrappers, put them in envelopes, and turned them over to the chemist?

A. Put them in glassine bags.

Q. You have identified the glassine bags?

A. Yes.

Q. You put the glassine bags in envelopes and then turned it all over to the chemist?

A. That is correct.

Q. That is the white powder. Now, tell me: I notice these envelopes here, U. S. Exhibits for identification from 20 through 31, they are discolored and torn. Were they in that condition when Mr. White gave them to you? A. No.

Q. What happened to them? What was the condition when you got them?

A. The condition of the envelopes was sealed.

Q. Were they white envelopes?

A. Ordinary white—what you would call commercial letter envelopes.

Q. All the same kind? [49]

A. Yes, I would say they were similar in appearance.

Q. Were they all the same length, Mr. Cass?

A. Yes.

Q. And all sealed? A. Yes.

Q. And all white? A. Yes.

Q. You turned them over to Mr. Grady in that condition; they were treated chemically?

(Testimony of C. T. Cass.)

A. I did.

Q. The tears, of course, were not there when you received them from Mr. White, is that correct?

A. No, that is tears when I tore them open to take the container out, and they were soaking probably in this solution.

Q. Tell me, when you took them out of the paper bag, those envelopes, did you use gloves?

A. I did, I used rubber gloves.

Q. So you did not get your prints on the envelopes, is that right? A. Yes.

Mr. Karesh: That is all.

(Each of counsel for the defense indicated he did not desire to question the witness.)

The Court: That will be all. [50]

GEORGE H. WHITE

called as a witness on behalf of the United States,
sworn.

Direct Examination

By Mr. Karesh:

Q. Mr. White, your full name is what, sir?

A. George H. White.

Q. Mr. White, you are an employee of the United States? A. Yes, sir.

Q. How long have you been an employee of the United States? A. 16 years.

Q. And in what position—what positions did you hold for 16 years?

A. Narcotic agent, and Narcotic district supervisor.

(Testimony of George H. White.)

Q. You are at present narcotic district supervisor for this district? A. Yes, sir.

Q. And how long have you been Narcotic District Supervisor? A. Since August 1945.

Q. During the war you were in the armed forces?

A. Yes, sir.

Q. And you were in the offices of the Strategic Services, and you left the service with the rank of Lieutenant Colonel, is that correct?

A. Yes, sir.

Q. Now, calling your attention to October 31, 1948, did you see an informer on that day? [51]

A. Yes, sir.

Q. Where did you see him and about what time?

A. About 3:00 p.m.—at about 2:30 p.m., 305 Bush Street.

Q. Did you then go to Oakland with the informer? A. I did.

Q. How did you get to Oakland?

A. Drove in the informer's car.

Q. Anyone with you in the car when you drove across to Oakland?

A. Just the informer.

Q. Just the informer?

A. Just the informer.

Q. Did you then go to the vicinity of the Clay-Ten Hotel? A. Yes, sir.

Q. What happened there?

A. I entered the Clay-Ten Hotel with the informer, whose name is Charles Mallibee and waited

(Testimony of George H. White.)

in the lobby—this was at about 3:30 p.m. Mallibee went up, then came down in about three minutes——

Q. Just a minute. You have seen the picture that has been marked for identification, Clay-Ten Hotel? That is the Clay-Ten Hotel that you were speaking about, isn't it? A. Yes, sir.

Q. Go ahead.

A. I then went ahead with the informer to Room 306.

Q. Now, may I ask you this question: Did any other agents [52] follow you over that day?

A. Yes, sir. I was followed by Agent Cass, Bertin, Grady and Coffill.

Q. Did they come in a separate automobile?

A. Yes, sir.

Q. A government car? A. Yes, sir.

Q. You say you went to the lobby of the Clay-Ten Hotel? A. Yes, sir.

Q. What happened to the informer when you first went in, did he stay with you or did he leave?

A. He went upstairs.

Q. Did he use the elevator? A. Yes, sir.

Q. Go ahead.

A. The informer came downstairs in about three minutes and then I accompanied the informer upstairs.

Q. Did you go up the elevator?

A. Yes, sir.

Q. Where did you go?

A. We went to Room 306.

(Testimony of George H. White.)

Q. Of the Clay-Ten Hotel? A. Yes, sir.

Q. Then what happened?

A. The informer knocked on the door, the door was opened by the [53] defendant Leeper—

Q. Now, by “Leeper,” whom do you mean?

A. I mean the gentleman sitting back of counsel holding the cane.

Mr. Karesh: May the record show the witness has identified the defendant Raymond Leeper, Your Honor—this gentleman I am pointing to with the cane? A. Yes, sir.

Q. Go on. Tell us what happened.

A. We entered the room; I was introduced to Mr. Leeper as John Wilson. The informer said to Leeper, “Johnny is the man I was telling you about.”

Q. What name did you use over there?

A. John Wilson.

Q. Go ahead.

A. Leeper said he was glad to know me.

Mr. Dunning: Just a moment. On behalf of the defendant Ingoglia I am going to object to the conversation on the ground it is hearsay, not binding on the defendant Ingoglia.

The Court: That is true under the substantive defense, unless it is connected up later to him.

Mr. Karesh: We ask that Your Honor reserve the ruling until all the evidence is in.

The Court: Well, I will say this at the present time, it is received solely against this one defendant,

(Testimony of George H. White.)

and if later on the [54] evidence justifies, I will broaden the ruling to cover the defendant or defendants it relates to.

Mr. Karesh: Yes, Your Honor.

Mr. Dunning: Exception.

Q. (By Mr. Karesh): Go ahead, Colonel.

A. We sat down, the informer then said, "There is no point in my staying around. I will leave you two together."

I told the informer I would see him later and he departed.

I then had a conversation with Leeper——

Q. Anybody else in the room after the informer left?

A. Leeper and myself were alone.

Q. All right, tell us the conversation.

A. I showed—Leeper asked me if I had the money. I showed him a paper sack which contained approximately \$10,000 and exhibited the money to him. Leeper told me that the narcotics business was not his regular racket. He said that he was a professional gambler and also specialized in buying and selling of gold, that he had had some bad luck in the gold business and that he saw a chance to get on his feet in the narcotics business.

He told me that he had a source of supply for heroin of high-quality——

Q. Did he say where it came from?

A. Yes, it came from New York, and that he would be able to supply me with two kilograms a week if I could take that much.

(Testimony of George H. White.)

Q. What is a kilogram? [55]

A. A kilogram is about two and a quarter pounds.

Q. Go ahead. Anything said about the price of heroin?

A. I asked how much he was asking for the heroin in those quantities, and he said \$900 an ounce. I told him that the price was excessive in kilo quantities.

He said that he had for immediate sale to me twelve ounces of heroin which he would sell me for \$900 an ounce. He said that after I had tried this heroin and found that it was of high quality and undiluted that he would then be able to discuss with me the price of heroin in larger quantities.

I asked him where the heroin was and he said he had sent Slim for it.

This conversation took about ten minutes, and at that time—just at about that time Leeper said to me, “When these people come, I don’t want them to see you and they don’t want you to see them, and when they come, you must go into the bathroom.”

Q. The bathroom inside of Leeper’s room?

A. Yes, sir.

Q. Go ahead.

A. Shortly after there was a knock on the door—

Q. Could I interrupt you and ask you could you call Leeper’s room a small room or a large room?

A. It was an average sized hotel room containing a bed.

(Testimony of George H. White.)

Q. How far would you say from the entrance door of 306 was the bathroom? [56]

A. About ten feet.

Q. Incidentally, did you go to the bathroom?

A. Yes, sir.

Q. Into the bathroom? A. Yes, sir.

Q. Then what happened?

A. Then I came out of the bathroom.

Q. Go ahead; just tell us what happened.

A. While standing in the doorway of the bathroom, I saw Mr. Leeper open the door.

Q. You had already heard a knock, is that correct?

A. Yes, sir. He opened the door about six inches and without leaving the room reached his right hand through the opening in the door and when he brought his hand back in, it contained a paper sack. At that time I had walked out of the bathroom and was walking toward him, he handed me the sack and said, "Here's the stuff." I continued to walk towards the door, opened the sack and saw that it contained a number of white packages.

Q. Go ahead.

A. I proceeded directly without stopping, to the door of Room 306 and pulled it open.

Q. From the time you heard the knock to the time you pulled the door open—from the knock on the door until the door was opened, what period of time would you say elapsed?

(Testimony of George H. White.)

A. From the time I first heard the knock until Leeper opened the [57] door himself, I would say a period of five seconds elapsed and from the time Leeper pulled the package into the room until the time I opened the door would be another five or six seconds.

Q. Go ahead; what happened?

A. I pulled the door and I then saw two men standing, whom I identified as the defendants James Ballard and Andrew Ingoglia.

Q. Whom do you mean as James Ballard?

A. James Ballard is the young man sitting next to Mr. Leeper.

Q. Who is the man you are speaking about (indicating)?

A. Yes, sir.

Mr. Karesh: May the record show the witness has now identified the defendant James Ballard, Your Honor.

Q. Who else was standing outside the door?

A. Andrew Ingoglia, who is the defendant in the gray suit seated on the end—not on the end, he is fourth from Mr. Leeper.

Q. You mean this gentleman here (indicating)?

A. Yes, sir.

Mr. Karesh: May the record show the witness has now identified the defendant Andrew Ingoglia, Your Honor.

Q. Now, what is the physical setup? Which way were they facing?

A. When I opened the door, they were within two feet of Room 306.

(Testimony of George H. White.)

Q. Facing into the room?

A. Facing me as I opened the door. [58]

Q. Then what did you see and what happened?
Just go on.

A. I told them I was a Federal Narcotics officer and I exhibited a pistol and told them that they were under arrest.

Q. What was said?

A. Ingoglia said, "What is this all about?" And Ballard said, "What is this?" As they said that, they backed away from me, backed into the main hall of the hotel.

Q. Now, can I interrupt you and ask you, from the time that you first went out until the time you opened the door and saw Ballard and Ingoglia, did you hear any noise if another door was opening and shutting?
A. No, sir.

Q. Now, did you look past the room at the time you first accosted them and see whether the bathroom across the hall's door was open or shut?

A. It was open.

Q. Did you look into the bathroom before you took the defendants into the room?

A. I did.

Q. Was there anyone in the bathroom across the hall?
A. No, sir.

Mr. Karesh: May I have the photograph of the bathroom? This is United States No.—what is it, Mr. Clerk?

The Clerk: No. 16.

Q. (By Mr. Karesh): You are looking at, am

(Testimony of George H. White.)

I correct, out of [59] the room into this bathroom and then you go look in that bathroom and the door is open and no one is in there, is that right?

A. Yes, sir.

Q. And the door immediately to the right looking outside the room, was that open or shut?

A. Shut.

Q. And you heard no noise from that door, is that right?

A. No, sir.

Q. Tell us then what happened.

A. As I followed Ballard and Ingoglia who were retreating from the entrance of the room 306 into the hall, I had an unobstructed view of the hall and saw no other persons in that hall. I ushered—

Q. By hall, you mean the hall looking into the bathroom and also the long hall?

A. Yes, sir.

Q. —that you had come down from the elevator. By the hall you mean this hall here, U. S. Exhibit 16, you looked down that hall (exhibiting photograph to witness)?

A. Yes, sir. This is looking from the opposite end toward the room. I was standing at the far end of this picture.

Q. You looked all the way down to the elevator and you saw no one in the hall?

A. No, sir.

Q. The only two people you saw were the defendants you described, Ballard and Ingoglia, is that right?

A. Yes, sir.

Mr. Karesh: May we take the recess at this time, Your Honor?

(Testimony of George H. White.)

The Court: Ladies and gentlemen of the jury, and counsel, there will be memorial services in Judge Roche's courtroom at 2:00 o'clock this afternoon in honor of the late Judge St. Sure, so the recess this afternoon will be until 3:00 o'clock. The jury was instructed and admonished prior to the last recess on certain obligations of the jury, and you are expected and admonished to observe that admonition at each recess and adjournment.

(Thereupon an adjournment was taken until 3:00 o'clock p.m. this date.) [61]

Afternoon Session, Tuesday, June 7, 1949

GEORGE H. WHITE

(Recalled)

Direct Examination

(Resumed)

The Court: You may proceed.

Mr. Karesh: Mr. Reporter, would you read the last question and answer prior to the recess?

(Record read.)

Q. (By Mr. Karesh): I think you have already testified that you saw the defendants Ballard and Ingoglia in front of the door, and will you again tell us, for the sake of continuity, the first word you spoke to them outside the door when it was first opened?

A. I told them I was a Federal narcotic agent and that they were under arrest.

(Testimony of George H. White.)

Q. Now, did you ask them about a package outside the door? A. No, sir.

Q. Now, you took them into the room, Ballard and Ingoglia, and then just what was said by each of the defendants, if anything, there, and what was done?

A. I asked both of the defendants Ingoglia and Ballard where they had got the package which I was then holding in my hand, which was the package I had taken from Leeper. Both Ingoglia and Ballard——

Mr. Karesh: Just a moment, just a moment. Would you let me have the paper sack? [62]

Q. Is this the paper sack? Did you put your initials on it?

A. Yes, sir, I wrote my name on it.

Q. Your name. Was the sack in that condition when you first saw it?

A. No, it was in the form of a sack and not in the form of a flat piece of paper.

Q. And did it have all the discolorations on it at the time?

A. It did not have the discolorations on it. Both Ballard and Ingoglia said they had never seen the package before.

Q. Did you ask it of them separately?

A. Yes, sir.

Q. Just recount what you said to each one and what each one said back to you, as best as you can remember at this time.

(Testimony of George H. White.)

A. I asked Ballard if he had seen the package before, and he said he had never seen it before, I asked Ingoglia if he had ever seen the package before, and he said he had never seen it before.

Q. At that time did you ask Ballard and Ingoglia their names?

A. Immediately thereafter—upon first coming into the room I searched both Ingoglia and Ballard for weapons and found none.

Q. Go ahead.

A. I then asked Ballard what his name was, and he said that his name was James Ballard. I asked him what he did for a living and he said that he was a taxidriver. I asked Ingoglia what his name was and he said it was Andy Bruno. I asked him if he was also known as Ingoglia and he said that he was. I asked—— [63]

Q. Now, at this time did Leeper and Ballard and Ingoglia exchange any conversation each with the other? A. No, sir.

Q. Did they appear to know each other, act as though they knew each other?

Mr. Deasy: Objected to on the ground it calls for an opinion and conclusion.

The Court: Sustained.

Q. (By Mr. Karesh): There was no conversation between them, no one spoke to each other?

A. No, sir.

Q. Go ahead.

(Testimony of George H. White.)

A. I then ordered Ingoglia, Ballard and Leeper to lie on the floor, which they did.

Q. Now, let me interrupt you for a second. Going back to the original conversation that you had with Leeper, you were posing as what?

A. As a gangster and dope peddler.

Q. He didn't know that you were an agent of the Bureau of Narcotics, did he? You didn't tell him that?

A. Not at the outset, no, sir, not until I placed him under arrest.

Q. Go ahead.

A. While they were lying on the floor I asked if they had seen anyone in the hall while they were standing outside there. They [64] said——

Q. By "them" whom do you mean, Mr. White?

A. Referring to Ballard and Ingoglia.

Q. What did they say?

A. They said that they had not. I asked what were they doing there. Ballard said that he came to see Leeper about a job on the railroad.

Q. Go ahead.

A. Ingoglia said he was just waiting for a fellow.

Q. Just waiting for a fellow?

A. I asked him what fellow, who the fellow was, and he said. "Just waiting for a fellow."

Q. Go ahead.

A. I then went to the telephone and telephoned to the desk clerk, and told him that I was a Federal officer and had three men in custody, and asked him to call the police.

(Testimony of George H. White.)

Q. Go ahead.

A. I waited about—during that time Leeper first complained about lying on the floor was very painful to him because of his injured hip, and asked to be allowed to get up and sit on the bed, and I told him that he could get up and sit on the bed, and he did. Leeper then said, “Of course, these fellows have nothing to do with this. You have got me, but they had nothing to do with it.”

Q. Go ahead.

A. I waited about five minutes and the police had not yet arrived. [65] I opened the window of the hotel and fired a shot out of the window into the air.

Q. Go ahead.

A. Shortly thereafter the police officers and the agents who were down in the street came up in the room.

Q. Now, did you ask either Ballard or Ingoglia how they got to the hotel?

A. No, sir.

Q. Did you ask Leeper how these men got to the hotel?

A. No, sir.

Q. Now, how long thereafter did the police arrive, if they did arrive?

A. The police and the other agents arrived shortly after—about five minutes after I had telephoned to the police, and almost immediately after I fired the shot out the window.

Q. Who came in first, the police officers?

A. Yes, sir.

(Testimony of George H. White.)

Q. Were there more than one? A. Two.

Q. Shortly thereafter which agents came into the room? A. Agents Grady and Bertin.

Q. Now, anything else said with the defendants at that time? Do you remember of any other conversation?

A. There was some conversation. Search was made of Leeper's room and no other narcotics were found. Various questions were [66] asked of the three persons, Leeper, Ballard and Ingoglia, by the police officers, as to their names and their addresses, and they then transported Leeper, Ingoglia and Ballard to the Oakland city police station and booked them.

Q. Now, when you looked into the package what did you see in the package? Now, by the package, I am referring to this grocery bag, as we will call it, U. S. Exhibit No.—what is it, 16?

The Clerk: 18, sir.

Q. (By Mr. Karesh): 18.

A. I saw a number, an uncounted number of white envelopes which are similar to the envelopes in which the drugs are now contained.

Q. Now, tell me, did you handle with your hands the envelopes inside the package? A. No, sir.

Q. What did you do with the package and the envelopes in the package?

A. I kept them in my immediate possession until I returned to San Francisco, and then gave the package to Agent Cass.

(Testimony of George H. White.)

Q. Now, did you put your initials on the envelopes that you had given to Agent Cass?

A. Not at that time.

Q. When did you do that?

A. The next morning. [67]

Q. All right. You have got the envelopes? What are these exhibits?

The Clerk: 20 to 31, inclusive.

Q. (By Mr. Karesh): Now, I will show you Exhibits 20 to 31, inclusive, for identification, and ask you can you identify them.

A. On each of these exhibits I put my initials, "G. H. W." in green ink, and these are the envelopes that were originally contained in the paper sack which I took from Leeper in the Room 306 of the Clay-Ten Hotel on October 31.

Q. 1948. Now, when did you see Cass and put your initials on these? Was that November 1st?

A. I put my initials on about nine o'clock in the morning on November 1st.

Q. Did you wear gloves when you did that?

A. Yes, sir.

Q. Your initials on each one of these?

A. Yes, sir.

Q. Were you present when the envelopes were broken open? A. Yes, sir.

Q. All right, tell us just what happened. Who was there?

A. Agent Grady, Agent Cass, and myself were present. Agent Cass, wearing rubber gloves, using

(Testimony of George H. White.)

a scissors, slit one end of the envelope and removed therefrom a cellophane package, opened that cellophane package by cutting it with a scissors, transferred the contents of the package into another waxed paper [68] package, and in turn put that waxed paper package inside of a different white envelope, weighed it and sealed it. The second package to which this powder had been transferred were then initialed by Cass, Grady and myself.

Q. Now, these packages you are talking about where the narcotics were replaced by Cass, U. S. Exhibits 1 to 12, were they examined to see if those are the envelopes, and you put your initials on those packages?

A. All of these packages bear my initials, and these are the packages to which the contents of the other envelopes were transferred on that occasion.

Q. When you say contents, was it a powder?

A. A powder.

Q. Now, what is there on the inside of the envelope, is there a cellophane—

A. There is a waxed paper contained inside of the white envelope.

Q. Inside of each one of these white envelopes?

A. Yes, sir.

Q. Now, Exhibits 20 to 31, inclusive, at the time you placed your initials on them, what color were they? A. They were white.

Q. All of the same size? A. Yes, sir.

(Testimony of George H. White.)

Q. Length and width?

A. Yes, sir. [69]

Q. All sealed?

A. Yes, sir. At the time I placed my initials on them they were not sealed.

Q. They were already broken?

A. They were open.

Q. What was the color, white? A. Yes.

Q. Inside of these was there just the powder, or some other wrapper inside of Exhibits 20 to 31?

A. Glassine envelopes contained inside the white envelopes.

Q. Look in U. S. Exhibit No. 18 For Identification and tell me—what do you call that?

A. I would call them paraffine or cellophane.

Q. How many are there, twelve?

A. Yes, sir.

Q. All right. Let me get this straight: Out of this paper bag came the 12 packages, U. S. Exhibits 20 through 31 For Identification?

A. Yes, sir.

Q. Out of these envelopes came the glassine bags and in the glassine bags came the powder?

A. Yes, sir.

Q. The powder was then taken out and transferred to waxed paper—the contents of one envelope here put in one envelope here, is that right? [70]

A. Yes, sir.

Q. Calling your attention to November 1, 1948, did you have a conversation with James Marvin Ballard? A. Yes, sir.

(Testimony of George H. White.)

Q. Where did the conversation take place and who was present?

A. It took place in the afternoon in the County Jail following arrangements before the United States Commissioner. Present were myself, Ballard, Agents Bertin and McGuire.

Q. May I digress for just a moment and ask you whether or not at any time you saw any revenue stamps on these packages to which we have referred, either this paper sack, U. S. Exhibit 18 For Identification, or these other envelopes, U. S. Exhibits 20 through 31 For Identification?

A. No, sir.

Q. Are any revenue stamps on this—would you call it again? A. Glassine envelopes.

Q. —glassine envelopes, U. S. Exhibit 19 For Identification?

A. At no time did I see any revenue stamps on any of those objects.

Q. And there are none here, of course, on U. S. Exhibit 1 through 20? A. No, sir.

Q. Now, going back to November 1, 1948, you say you had a conversation with Mr. Ballard—and may I say this, your Honor, this conversation is now offered, inasmuch as the conspiracy [71] is terminated at this time, only as to the defendant Ballard.

The Court: It is received only as to the defendant Ballard.

A. I asked Ballard if he cared to make any ex-

(Testimony of George H. White.)

planation of the situation in which he found himself. Ballard asked me what there was in it for him if he would make a statement. I told him that I was not empowered to make him any promises, but if he did make a statement and disclosed any information of value I would report that to the United States Attorney for whatever disposition he might be able to make of it. Ballard repeatedly asked me if I could assure him that he would not be prosecuted or indicted, and I told him that I could give him no such assurance. Ballard said that he first met Ingoglia through McDonough, that McDonough had met Ingoglia at the race track and had learned that Ingoglia had large quantities of narcotics; that he wished to see——

Mr. Dunning: Just a moment, I am going to object to this as hearsay as to the defendant Ingoglia.

The Court: I received it solely as to the defendant Ballard. It is not received against any other defendants.

A. Ballard said he had known Leeper for several years and he believed Leeper to have money, that he was a gambler, and he thought he might know some underworld characters who would purchase these narcotics.

Q. (By Mr. Karesh): That Leeper——

A. That Leeper would know some underworld characters who would [72] purchase these narcotics, and that he then made arrangements to introduce Leeper to McDonough, and McDonough introduced

(Testimony of George H. White.)

Leeper to Ingoglia. He said that on October 31st, the Sunday on which he was arrested——

Q. 1948?

A. ——1948, he had been in Leeper's room and that Leeper had told him to go out and get Ingoglia and bring him up to the room.

Q. Did he tell you what kind of a conveyance he was to use?

A. He said that he was driving Leeper's 1942 Cadillac automobile—1941 Cadillac.

Q. 1941.

A. I asked him if he knew what the purpose was in bringing Ingoglia to the room at that time and he said he did not. He said that he left the room, and in order to find Ingoglia he had to locate McDonough. He found McDonough and McDonough directed him to a location where he found Ingoglia standing on a street corner. He picked up Ingoglia and with McDonough he returned to the hotel. I asked him if he had seen Ingoglia carrying a package and he said that he had not. I asked him if he had seen McDonough carrying a package and he said that he had not. And I asked if he had carried a package and he said that he had not. I asked him if he knew that the reason for bringing Ingoglia to that hotel room at that time was to make a delivery of narcotics, and he said that he did not know that, that he figured something of the sort was going on. [73]

That was the extent of our conversation. I asked

(Testimony of George H. White.)

him if he had ever been arrested and he said he had not.

Q. Just a minute. Did you have any other conversation with Ingoglia? Ever talk to him?

A. No, sir.

Q. How about Leeper since the time in the hotel?

A. I talked to Leeper on the telephone on one occasion—I believe I was talking to Leeper at that time——

Mr. Deasy: I am going to object to this, may it please the court, the proper foundation has not been laid.

The Court: Yes.

Q. (By Mr. Karesh): When and where—what number did you call?

A. I called the Clay-Ten Hotel and asked for Leeper.

Q. When? How long after the arrest, if you remember?

A. Approximately two months thereafter.

Q. What did you say to him?

A. I said that I heard that he wanted to be in touch with me, that he wanted me to get in touch with him.

Q. What did he say?

A. But he said that he did, that he was very sick and he didn't feel that he could talk to me at that time.

Q. Talk with him since?

A. No, sir.

Q. Talk to McDonough?

(Testimony of George H. White.)

A. I have never talked to McDonough. [74]

Mr. Karesh: That is all. Pardon me, I see an agent in the room who might be a witness, Mr. McGuire, so I will ask him not to stay in the room. Apparently he didn't know that.

Cross-Examination

By Mr. Dunning:

Q. Referring to the date of October 31, 1948, you stated that upon that day, approximately 2:30 in the afternoon, that you went to the Clay-Ten Apartments with a person whom you know as Malla-bee, is that correct? A. Yes, sir.

Q. And at that time this individual was being used by you as an informer in this case?

A. Yes, sir.

Q. Is that the same Mr. Mallabee who was formerly convicted——

Mr. Karesh: Objected to as hearsay, he was convicted; objected to as incompetent, irrelevant, and immaterial.

The Court: Sustained.

Q. (By Mr. Dunning): Were you using this informer under any promise of immunity or reward of any kind at that time?

Mr. Karesh: Objected to as incompetent, irrelevant, and immaterial.

The Court: Sustained.

Q. (By Mr. Dunning): You proceeded from San Francisco, as I understand, with this informer, you went directly with Mallabee, the informer, to

(Testimony of George H. White.)

the Clay-Ten Apartments, is that correct?

A. Yes, sir. [75]

Q. And as I understand your testimony other agents followed you from San Francisco to the Clay-Ten Apartments? A. Yes, sir.

Q. And did you alone, together with Mallabee, enter the Clay-Ten Apartments or did you go there with any other agents?

A. I entered alone with Mallabee.

Q. You entered the room—you are referring to room 306? A. Yes, sir. [75a]

Q. And where were the other agents who followed you from San Francisco?

A. On the street outside.

Q. They did not enter the lobby or the premises of the Clay-Ten Apartments? A. No, sir.

Q. And that was approximately 2:30 in the afternoon, is that correct?

A. No, it was later than that. We left San Francisco at about 2:30. It was about 3:30 when we entered the Clay-Ten.

Q. Now, did you go directly to the room with Mallibee or do I understand your testimony that he first went to 306, to where Leeper was present?

A. I don't know where he went, but he left me and went upstairs for about three minutes and then returned.

Q. How long was Mr. Mallibee gone?

A. About three minutes.

Q. About three minutes?

(Testimony of George H. White.)

A. Three or four minutes.

Q. And did he return directly to the lobby where you were? A. Yes, sir.

Q. And as I understand your testimony, Mr. White, you then proceeded to the room with Mr. Mallibee?

A. Proceeded to the room of Mr. Leeper.

Q. Of Mr. Leeper with Mr. Mallibee? [76]

A. Yes, sir.

Q. Now, was there—Withdraw that. Mr. Mallibee introduced you to Mr. Leeper and then he left immediately by saying that he guessed you didn't—he did not wait around any longer, is that correct?

A. That is correct.

Q. You had never met Leeper before?

A. No, sir.

Q. What name did Mr. Mallibee introduce you under to Mr. Leeper? A. Johnny Wilson.

Q. Now, no mention during your conversation with Mr. Leeper as to the defendant Ingoglia, was there? A. No, sir.

Q. How long did you say you talked to Mr. Leeper in the room, Mr. White?

A. About ten minutes.

Q. About ten minutes. And during that time you discussed the purchase of these narcotics that have been introduced in evidence, is that correct?

A. Yes, sir.

Q. Mr. Leeper didn't tell you where the narcotics were coming from?

(Testimony of George H. White.)

A. He said it came from New York.

Q. Now, as I understand your testimony, Mr. Leeper said to you that when these people arrived you were to go into the lavatory, [77] is that correct?

A. Yes, sir.

Q. And that is the lavatory referred to inside of Room 306 at the Clay-Ten Apartments?

A. Yes, sir.

Q. Upon hearing the knock that you referred to, did you go immediately into the lavatory?

A. Yes, sir.

Q. Mr. Leeper was still in this room?

A. Yes, sir.

Q. He said to you that these people didn't want you to see them and he didn't want you to see them, is that correct?

A. Yes, sir.

Q. Now, did you shut the door to the lavatory? Did Mr. Leeper shut the door?

A. No, sir.

Q. Did Mr. Leeper go directly to the door?

A. Yes, sir.

Q. All that you know, Mr. White, is that Mr. Leeper placed his hand through the door and received an object?

A. Yes, sir.

Q. You couldn't see on the other side or outside of the door of Room 306, could you?

A. No, sir.

Q. And you didn't see any object until after Mr. Leeper closed [78] the door and came back into the room—that is, he closed the door and approached you?

(Testimony of George H. White.)

A. I saw the object the minute he withdrew it into the room. I was watching him put his hand through the door.

Q. And he shut the door?

A. As he brought his hand back in, he was holding an object and he then shut the door.

Q. He then what?

A. He then shut the door.

Q. He then shut the door, and then Mr. Leeper went to you with the object or the package that has been referred to here, is that your testimony?

A. Yes, sir, he walked towards me and I walked towards him

Q. I see. And did Mr. Leeper then hand you this package that has been referred to?

A. Yes, sir.

Q. And the package was the same package that has been generally described here as being contained in a brown paper envelope, Plaintiff's Exhibit No. 18 for identification? A. Yes, sir.

Q. Is that correct? You couldn't see what was inside of the package, the white envelope, at the time Mr. Leeper approached you with the brown paper package, could you? A. No, sir.

Q. You then took the brown paper bag or package from Mr. Leeper, [79] is that correct?

A. Yes, sir.

Q. And I take it that you immediately examined the contents and counted them?

A. I didn't count them.

(Testimony of George H. White.)

Q. Well, there has been identified for identification twelve envelopes, is that correct?

A. Yes, sir.

Q. And did you notice that there were twelve envelopes in the brown paper bag or a number of envelopes in the brown paper bag?

A. A number, but I didn't count them at that time.

Q. You didn't count them, but you observed that there were a number of white envelopes in the paper bag?

A. Yes, sir.

Q. Is that correct? Now, did you make any examination of the white envelopes that you so observed?

A. At that time?

Q. Yes.

A. No, sir. [80]

Q. What did you do with this brown paper bag immediately after you received it from Mr. Leeper?

A. I kept it in my left hand.

Q. Did you have it in your left hand all of the time from the point of time of receiving it from Mr. Leeper to the point of time you opened the door of room 306?

A. Yes, sir.

Q. When you say you observed a number of envelopes in the brown paper bag, I take it you examined the contents of the bag in some respects; how did you do that, Mr. White?

A. By opening the bag and looking into it.

Q. And you could see from that observation that there were a number of white envelopes contained in the brown paper bag?

A. Yes, sir.

(Testimony of George H. White.)

Q. What, if anything, did you say to Mr. Leeper? What did he say to you and what did you say to him when he handed you the brown paper bag?

A. Leeper said, "Here is the stuff." I didn't say anything.

Q. What did you do next?

A. Opened the door of the hotel room.

Q. You went directly to the door of 306?

A. Yes, sir.

Q. Didn't you identify yourself to Mr. Leeper as a federal officer at that particular point of time after you observed the contents of this brown bag?

A. No, sir.

Q. Didn't you give certain instructions to Mr. Leeper as to what he should do immediately after you examined the contents of this brown bag?

A. No, sir.

Q. Didn't you tell Mr. Leeper to sit himself upon the floor of room 306?

A. Not at that time.

Q. You say you went directly to the door, is that correct?

A. Yes, sir.

Q. You drew your gun from your person, did you not, immediately after you observed the contents of the brown bag and when you proceeded to the door of room 306?

A. As I opened the door.

Q. As you opened the door. Well, didn't you

(Testimony of George H. White.)

observe anything that Mr. Leeper said or did when you drew your gun, Mr. White?

A. As far as I know, he was just standing there. He said nothing.

Q. He observed you take your gun and proceed to the door of room 306, is that correct?

A. Yes, sir.

Q. At that time you said nothing whatsoever to Mr. Leeper? A. No, sir.

Q. You gave him no instructions at all as far as sitting himself upon the floor of room 306? [82]

A. No, sir.

Q. When you drew your gun, as you have so testified, and proceeded to the door of room 306, had you at any time made any search of Mr. Leeper? A. No, sir.

Q. What observations, if any, did you take of Mr. Leeper's actions during all this time that you proceeded to the door with your gun drawn?

A. I tried to keep them under observation as best I could.

Q. When you say as best you could, how would you describe that?

A. I would describe that by saying I would look at him as much as I could consistent with the other thing that I was trying to do.

Q. Do you mean to say that you did look at Mr. Leeper while you had your gun drawn?

A. Yes, sir.

Q. He made no statement nor asked no questions of you under those circumstances?

(Testimony of George H. White.)

A. No, sir.

Q. You did not at that particular time or at any other time while you were inside the room tell Mr. Leeper that you were a federal officer?

A. Subsequently when I came back in the room with Ingoglia and Ballard.

Q. You did not during that period of time before you opened the [83] door of Room 306 with your gun drawn, you did not during that period of time state to Mr. Leeper that you were a federal officer?

A. No, sir.

Q. You did not during any of that period of time give him any instructions or orders as a federal officer? A. No, sir.

Q. Referring to Plaintiff's Exhibit 14 for identification, that generally is a photograph showing the approach of Room 306; is that correct?

A. The approach to Room 306.

Q. From the hallway? A. Yes, sir.

Q. Where with reference to that photograph is Room 306? Would you hold it up?

A. The Room 306 is immediately adjacent to this portion of the photograph here, and the edge of the door can just barely be seen. It appears as a slightly darker spot on the photograph.

Q. It is true, is it not, Mr. White, that there is a bend or an angular turn in the hallway toward Room 306, is that correct? A. Yes, sir.

Q. How much would you approximate the distance to be of the turn, from the turn to the door of 306?

(Testimony of George H. White.)

A. I believe that the hinged side of the door of 306 is directly against the hall itself. If not directly against it, not [84] more than six inches away from it.

Q. You are referring to what hall? Are you referring to this hallway that is disclosed in this photograph? A. Yes, sir.

Q. But not the section of the hallway that we referred to as that portion which turns from the main hall?

A. The Room 306—I might better explain it by saying that at the end of the hallway there is a large recess that opens into a sort of Y at the end. On the 306 side, the hinges of the door of 306 are almost even with the corridor of the hotel, but the opposite side of the door would be several feet back of the corridor line; so there is about a 45 degree angle.

Q. Back of what we might refer to as the main corridor, is that correct? A. Yes, sir.

Q. You say there is another corridor, a small corridor, that extends itself from the main corridor, from this portion of the photograph, is that correct (indicating)?

A. Yes, sir, it is recessed, I would call it.

Q. How far is that from Room 306?

A. How far is the end of that?

Q. How far is the beginning of that hallway from Room 306?

(Testimony of George H. White.)

A. Well, 306 enters onto that portion of the extended hallway.

Q. You then went to the door of Room 306, is that correct? A. Yes, sir. [85]

Q. Up until that point of time, you had made no observations as to who the person was on the other side of the Room 306? A. No, sir.

Q. You opened the door, did you?

A. Yes, sir.

Q. You had your gun drawn? A. Yes, sir.

Q. You then observed the defendant Ingoglia and the defendant Ballard, is that correct?

A. Yes, sir.

Q. As I understand your testimony, Mr. White, you then placed your gun upon the persons of both Ingoglia and the defendant Ballard and informed them that you were a federal officer?

A. I am not sure that I understand you.

Q. Immediately upon opening the door, you informed both of these defendants that you were a federal officer, is that correct? A. Yes, sir.

Q. The defendants, as I understand your testimony, retreated? A. Yes, sir.

Q. A distance of some three or more feet from where they were first standing when you opened the door? A. Yes, sir.

Q. You would say, would you not, that they retreated at that time to a distance of some four or five feet from Room 306? [86] A. Yes, sir.

Q. And during this period of time you had your

(Testimony of George H. White.)

gun on both the defendant Ingoglia and the defendant Ballard?

A. I was holding it in my hand. I did not place it on them.

Q. Yes, you were holding it in your hand so they could see it? A. Yes, sir.

Q. What question did you say you asked or statement you made to either of those defendants at that particular point of time?

A. I told them to get in the room.

Q. Was that all that you said to either of the defendants?

A. In addition to telling them that I was a narcotic agent.

Q. You told them that after you had retreated, as you have so testified, is that correct?

A. Yes, sir.

Q. During all of this time that you had held your gun and the defendant Ingoglia and Ballard retreated from their position in the hallway there, where was the defendant Leeper?

A. In his room.

Q. He was still in his room, and you did not have the defendant Leeper under observation?

A. No, sir.

Q. Leeper was not on the floor?

A. No, sir.

Q. You did not at any time search Mr. Leeper from the time you received the package from him to the point of time where you [87] observed the defendant Ballard and Ingoglia?

(Testimony of George H. White.)

A. That is correct.

Q. You say you observed the lavatory in the hallway there? A. Yes, sir.

Q. Did the defendants Ingoglia and Ballard retreat as far as the lavatory? A. No, sir.

Q. Well, they retreated far enough so that you could see all the way down the main corridor, is that correct? A. Yes.

Q. When you first opened the door, which one of the defendants did you first observe?

A. I saw them both simultaneously.

Q. Were they standing side by side or one in front of the other or exactly how were they standing? A. Side by side.

Q. Mr. White, you had already advised the defendants that you were a federal officer and they entered the room, is that correct, under your direction? A. Yes, sir.

Q. You asked the defendant Ballard what his name was and he told you James Ballard?

A. Yes, sir.

Q. And you asked the defendant Ingoglia what his name was, is that correct? [88]

A. Yes, sir.

Q. You testified he said his name was Andy Bruno, is that your testimony? A. Yes, sir.

Q. Do you recall that he said Andy or Bruno?

A. No, sir.

Q. And that you then asked him for his last name and he stated his name was Ingoglia?

A. That is not correct.

(Testimony of George H. White.)

Q. That is not correct; that is your testimony?

A. No, it is not.

Q. Isn't it a fact that immediately upon bringing the defendant Ingoglia along with Ballard into the room, that you then ordered both of these defendants to remain seated upon the floor of Room 306?

A. No, I searched them first.

Q. You searched Ballard and you searched Ingoglia?

A. And Leeper.

Q. And then you searched Leeper?

A. Yes, sir.

Q. You then phoned the clerk of the hotel, as I understand it, is that correct?

A. Yes, sir.

Q. None of the other agents appeared upon the scene at that particular point of time? [89]

A. No, sir.

Q. They still remained outside the Clay-Ten Apartments, as far as you know?

A. Yes, sir.

Q. It was some time, was it not, Mr. White, before any police officers or agents appeared at Room 306?

A. About five minutes.

Q. After you had waited for some period of time, you found it necessary to fire several shots out of the apartment window in order to attract the other agents who were outside the Clay-Ten Apartments?

A. One shot.

Q. How long after you fired that one shot did the other agents appear?

A. Within about a minute.

Q. Your main interest at the time you opened

(Testimony of George H. White.)

the door and saw the defendants Ballard and Ingoglia was upon those two persons, is that correct?

A. Was what?

Q. Your main interest at that point of time was centered upon those two individuals?

A. Well, I was interested in everything that was going on and everyone that was present.

Q. You did not make a search of the lavatory that was adjoining the hallway there, did you? [90]

A. No, sir.

Q. There is a door to the lavatory, is there not?

A. Yes, sir.

Q. You had no further conversation with the defendant Ingoglia inside of the Room 306 after you directed him to enter it together with Ballard, did you? A. Yes, I did.

Q. Well, he gave you his name, as I understand it, is that correct? A. Yes, sir.

Q. And he told you that he was in the hallway where you found him. There was no other conversation?

A. He said he was waiting for a fellow.

Q. You had the package that you referred to that has been introduced here in your hand all the time, Mr. White, from the time you received it from the defendant Leeper? A. Yes, sir.

Q. Was this package as I see it here, discolored? [This was, I take it, submitted for fingerprints?

A. Yes, sir.

Q. And all of the other exhibits, the envelopes

(Testimony of George H. White.)

introduced for identification, were likewise submitted for fingerprints of these defendants?

A. Yes, sir.

Q. You say you asked the defendant Ballard if the defendant [91] Ingoglia had this package at the time he first observed him on this day?

A. Yes, sir.

Q. He told you that Ingoglia did not have any package upon his person?

A. He said he did not see any.

Q. He did not see any package and he did not see any package on Ingoglia from the time he first met him on the day in question or during any of the time from the time he met him until the time you first observed the defendants in the hallway?

A. He had never seen the package at all until I showed it to him, under any circumstances.

Q. He never saw the package at all. Ballard did not tell you he met Ingoglia for the purpose of the delivery of this particular package, did he?

A. No, sir.

Q. Or for the purpose of delivering any narcotics?

A. No, sir, he said that he had thought that he might have been delivering narcotics.

Mr. Dunning: I will ask that that go out.

The Court: It is further conversation.

Mr. Dunning: He said he thought.

The Witness: He said he thought it might have been for that purpose, but he did not see any package.

(Testimony of George H. White.)

Q. (By Mr. Dunning): He did not tell you he knew of any transaction [92] that was actually taking place at that point of time, did he?

A. No, sir.

Q. Mr. White, as I understand it, when you heard him knock on the door, you walked from the position where you were in 306 talking to the defendant Leeper to the lavatory in the apartment, is that correct? A. Yes, sir.

Q. And you remained there until the defendant Leeper went to the door and opened it, is that correct? A. Yes, sir.

Q. You saw no person standing outside the door? A. No, sir.

Q. Leeper then closed the door and walked towards you from your position in the lavatory, is that correct?

A. No, sir, I was no longer in the lavatory when he opened the door and left the lavatory.

Q. You started to walk out of the lavatory and Leeper then handed you the package?

A. Yes, sir.

Q. And you opened the package?

A. Yes, sir.

Q. You made an observation to such an extent as you did observe of a number of white envelopes in the package, is that correct? A. Yes, sir.

Q. Then you took your gun from your person and proceeded to the door of Room 306?

A. Yes, sir.

(Testimony of George H. White.).

Q. And then you opened the door?

A. Yes, sir.

Q. And your testimony is that during all that period of time that only five seconds elapsed?

A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Mr. Dunning: I have no further questions.

Cross-Examination

By Mr. Deasy:

Q. Mr. White, referring to the conversations that you had with Mr. Ballard, you had certain conversations on October 31, 1948 and certain on November 1, 1948, is that correct?

A. Yes, sir.

Q. And those are the two statements that you were referring to in your testimony on the witness stand here? A. Yes, sir.

Q. Now, have you any notes that you made of those conversations? A. No, sir.

Q. Then you are testifying now strictly from your memory of what took place on those two occasions, is that correct? I am [94] referring now to conversations. A. Yes, sir.

Q. You stated that you have been employed as a narcotic agent for some 16 years, is that correct, Mr. White? A. Yes, sir.

Q. How much of that time has been spent in the Bay Area?

A. Well, I first came here in 1934, worked here for one year, 1934 to 1935, and did not return here

(Testimony of George H. White.)

except for brief special assignments until September of last year.

Q. September of last year, is that correct?

A. Yes, sir.

Q. How long have you been the supervising narcotic officer for this district?

A. Since I came here in September of last year.

Q. September of 1948? A. Yes, sir.

Q. Now, if I recall your testimony, this is the first time that you have seen Mr. Leeper, is that correct, when you saw him in the Clay-Ten Hotel?

A. Yes, sir.

Q. From the time that you and Mr. Mallibee first entered the room at Room 306 at the Clay-Ten Hotel until the time that you heard the knock on the door, did you hear any other sounds out in the hallway? A. No, sir. [95]

Q. Then you did not hear any footsteps approaching, did you, sir? A. No, sir.

Q. Mr. Mallibee had previously been in the room and he left, didn't he? A. Yes, sir.

Q. Was that hallway carpeted?

A. I believe so.

Q. In any event, whether it was carpeted or not carpeted, the first sound that attracted your attention from the outside after you first arrived was the knock on the door? A. Yes, sir.

Q. You were accompanied, sir, to Oakland by certain agents, is that correct? A. Yes, sir.

Q. And who were those agents?

(Testimony of George H. White.)

A. Agents Grady, Cass and Coffill.

Q. And those gentlemen are agents in your department working under your supervision and control?

A. Yes, sir.

Q. However, there was also another party who was working for you at that time whom you classify as an informer?

A. Yes, sir.

Q. So the status of Mr. Mallibee on this particular day was not an employee in the same sense as the other agents, is that correct? [96]

A. That is correct.

Q. Was he being reimbursed for his work?

A. No, sir.

Q. He was not getting any pay?

A. No, sir.

Q. And when I say pay I mean money.

A. I understand you.

Q. Was he receiving any reward of any description?

Mr. Karesh: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Deasy): After you were in with Mr. Leeper for a period of time, you heard a knock on the door, is that correct?

A. Yes, sir.

Q. Mr. Leeper handed you a package?

A. Yes, sir.

Q. You had in your possession some \$10,000?

A. Yes, sir.

Q. And this \$10,000, or whatever portion was

(Testimony of George H. White.)

necessary, was to be used to pay for the contents of this package? A. Yes, sir.

Q. After you were handed the package and looked into it, you started over toward the door of Room 306? A. Yes, sir.

Q. You had not at that time identified yourself as an agent, had [97] you? A. No, sir.

Q. And the price I understood you were to pay was something like \$900 an ounce, is that correct?

A. Yes, sir.

Q. And subsequent weighing proved there were approximately 11 ounces?

A. 12 packages containing 11 ounces.

Q. So the price would be somewhere in the vicinity of \$10,000? A. Yes, sir.

Q. When you started walking out toward the door, you had the narcotics and the \$10,000 both; that is correct, isn't it? A. No, sir.

Q. What had you done with the \$10,000?

A. I had hidden it in the radio at Mr. Leeper's suggestion.

Q. You had hidden it in a radio, is that correct?

A. Yes, sir.

Q. And then when you walked toward the door with these narcotics Mr. Leeper was left in the room with \$10,000, with the money hidden, is that correct? A. Yes, sir.

Q. At that time you did not tell him to get down on the floor, did you? A. No, sir.

Q. You did not introduce yourself as a federal

(Testimony of George H. White.)

agent at all [98] at that time? A. No, sir.

Q. Now, I am going to call your attention to United States Exhibit No. 16. Is that an exact representation of that scene as you viewed it on the 31st day of October 1948?

A. I would say so, with the exception that it was lighter than this photograph appears to be.

Q. It was brighter than the photograph appears to be, is that correct? A. Yes, sir.

Q. When was it that you first noticed the room that is depicted in Government's Exhibit No. 16?

A. When I opened the door.

Q. After being in the room with Mr. Leeper?

A. When I emerged from the room and apprehended McDonough and Ingolia.

Q. Well, you did not apprehend McDonough and Ingolia, as a matter of fact.

A. I am sorry.

Q. You apprehended Ballard and Ingolia, is that correct? A. That is right.

Q. Then, as you went into the room, you did not notice that room as depicted there, with the open door there, at all, did you? A. No, sir.

Q. So you could not tell at that time whether that door was open [99] or closed at all, did you?

A. No, sir.

Q. So you could not tell at that time whether that door was open or closed when you went into the room, could you? A. No, I could not.

Q. Were the doors of any other rooms open on

(Testimony of George H. White.)

October 31, 1948, either in the small alleyway that is depicted in United States Exhibit No. 16 or in the long corridor when you come down from the elevator, if you now recall?

A. None that I recall.

Q. At the time that you were in the room with Mr. Leeper, did you notice that he was lame?

A. Yes, sir.

Q. When you saw him walk over to the door, did you notice he was lame? A. Yes, sir.

Q. Did you notice whether or not he had a cane?

A. Yes, sir.

Q. And when was it that you first noticed the cane? A. When I first met him.

Q. Did he have the cane in his hand when he was going around the room or was it parked some place in the room?

A. I believe he carried it all the while.

Q. When you were out in the hallway with your gun on Mr. Ingoglia and Mr. Ballard, could you see Mr. Leeper? [100]

A. Not all the time. I could see him a portion of the time.

Q. There was a period of time when you could not see him, is that correct?

A. When I was looking forward at Ingoglia and Ballard, I could not see Leeper. He was back of me.

Q. And as they were retreating away from you, you kept looking at that, isn't that correct?

(Testimony of George H. White.)

A. Yes, sir.

Q. At that time Mr. Leeper was alone in the room out of your sight with \$10,000 of the Government's money?

A. That is correct.

Q. In addition to that, Mr. Leeper was behind you in the room with a cane in his possession—after you had announced just previously that you were a federal agent, isn't that correct?

A. That is correct.

Q. Now, I am referring to Mr. Ballard, Mr. White, to your conversations with him, and I am referring particularly to the conversation as of October 31, 1948, is that right? You understand what I am talking about?

A. I do.

Q. And in that conversation he told you that he had seen no package, is that correct?

A. That is right.

Q. You asked him what his name was and he told you that his name was James Ballard, correct?

A. Yes, sir.

Q. You asked him what his business or occupation was; he told you that he drove a taxicab, is that correct?

A. Yes, sir.

Q. You asked him why he was coming up to see Mr. Leeper and he told you that he was coming to see Mr. Leeper to see if Mr. Leeper could obtain him a job, or words to that effect, isn't that right?

A. A job in the railroad.

Q. And that substantially was the entire conversation that took place on the 31st of October,

(Testimony of George H. White.)

1948, with Mr. Ballard, as you now recall?

A. Yes, sir.

Q. Now, I am referring to the next conversation, which I believe you said was November 1st of 1948, am I correct in that? A. Yes, sir.

Q. Approximately what time was that, please, Mr. White?

A. About 3:00 o'clock in the afternoon, I believe.

Q. And in that conversation he told you that he had met Mr. Ingoglia about two days before, is that correct? A. Several days before.

Q. And he said that he was requested to go and get Mr. Ingoglia, is that correct? In that conversation he said that, did he not?

A. Referring to the occasion of the 31st?

Q. Yes, sir. [102] A. Yes, sir.

Q. I am referring to the conversation of November 1st as it refers to the occasion of October 31st. Do we have a meeting of the minds?

A. That is correct.

Q. And he told you he did not know where Ingoglia was, isn't that right? A. Yes, sir.

Q. He told you that he had to get some assistance to find out where the man was, isn't that right?

A. Yes, sir.

Q. And he said he did not know what Leeper wanted with Ingoglia or he did not know what Ingoglia wanted with Leeper, isn't that correct?

(Testimony of George H. White.)

A. No, sir.

Q. What was it he said about that?

A. He said he thought it had to do with a narcotics transaction.

Q. I realize he told you that later, but didn't he tell you first, sir, that he did not know what Leeper wanted with Ingoglia? A. No.

Q. But that he thought he wanted him in connection with some narcotic deal?

A. That is correct.

Q. Then he did tell you first that he did not know; he merely [103] surmised or thought, is that correct? A. That is correct.

Q. And he said that he picked Mr. Ingoglia up, brought him to the hotel, and saw no damage?

A. That is correct.

Q. Just one second, Your Honor, and I will be through. This conversation of November 1st, 1948—was that conducted in question and answer form? A. Yes, sir.

Q. You would ask certain questions and the defendant would give you certain answers to them, is that right?

A. Not in a form that you and I—that you are asking me questions at the moment. I made a general question and he would make a general answer.

Q. All right. Can you give me an example of a general question, please?

A. Yes. I said I wanted to know if he was will-

(Testimony of George H. White.)

ing to make an explanation of the circumstances surrounding his arrest. He countered with an answer in which he said in effect, "What is there in it for me?"

Q. You told him that you could make him no promises? A. That is correct.

Q. But you told him that if he would talk to you and there was anything that was beneficial to you, in such an event you would take it up with Mr. Karesh, this gentleman here, isn't that [104] correct? A. That is correct.

Mr. Deasy: I think that is all, sir. Thank you very much.

Mr. Dunning: No further questions. May I suggest we recess at this time?

The Court: I was going on to half-past four.

Mr. Dunning: I see. I had another appointment.

Redirect Examination

By Mr. Karesh:

Q. Mr. White, do you recall how the defendant Leeper was dressed in the hotel room on October 1, 1948?

A. He was wearing a shirt and trousers.

Q. Did he have on a coat? A. No, sir.

Q. Any bulges in his pocket? A. No, sir.

Q. When the knock was on the door, you heard the knock at the door, where were you?

A. I was seated in a chair about three feet from the bathroom door.

(Testimony of George H. White.)

Q. Did you have Mr. Leeper under your surveillance at that time?

A. Yes, he was seated on the bed directly opposite me.

Q. I am speaking of the time there was a knock on the door and he went to the door; did you have him under your surveillance? A. Yes, sir.

Q. After the knock on the door, he turned around, he opened the [105] door, and stuck his hand through the door—did you see that?

A. Yes, sir.

Q. You saw him bring back a package?

A. Yes, sir.

The Court: You have gone into all this, Mr. Karesh.

Q. (By Mr. Karesh): Did you hear any sound from the time there was the knock on the door until Mr. Leeper brought his hand back in the door?

A. No, sir.

Q. Or at the time you immediately opened the door—any sounds?

A. I heard myself talking.

Q. Beside that?

A. No, sir—I am not sure I know what you mean.

Q. Did you hear any footsteps in the hall?

A. No, sir.

Q. How does the door open in Room 306? Does it swing outward? A. It swings inward.

Q. Did you ask the defendant Leeper and/or

(Testimony of George H. White.)

the defendant Ballard when they came up whether they had seen anyone in the hall?

A. Yes, sir.

Q. What did they say?

A. That they had seen no one. That was Leeper and Ingoglia.

Q. That is what I meant.

A. I am sorry. Ballard and Ingoglia. [106]

Q. Ballard and Ingoglia said they had seen no one. That is all.

Recross-Examination

By Mr. Dunning:

Q. Mr. White, did you suspect that there was someone else in the hallway at that time when you asked Ballard and Ingoglia that question?

A. I do not know.

Q. You had an idea in your mind that there might have been?

A. No, they said they had not put the package in themselves. Yet the package did come in. And so I asked them if they had seen someone else put it in there, and they said they had not.

Q. Did you ask them if they saw someone else put the package in or had they seen someone else in the hall? Which one of those two questions did you ask?

A. I asked them if they had seen anybody else in the hall and they said they had not.

Q. So you did not ask them, then, whether they saw someone else put a package through the door?

A. You are correct.

(Testimony of George H. White.)

Q. You were wrong in that respect before?

A. I was wrong, yes, sir.

Q. (By Mr. Karesh): You asked them whether they had seen the package? A. Yes, sir.

The Court: Any further recross from counsel for the defense? [107]

(No attorney for the defendants indicate a desire to further question the witness.)

Mr. Karesh: And that is all. We have a short witness from the Department of Motor Vehicles whom we would like to call.

The Court: Bring him in.

LESTER HINGSBERGEN

was called as a witness on behalf of the Government, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Karesh:

Q. What did you say your name is?

A. Hingsbergen.

Q. What is your full name? A. Lester.

Q. By whom are you employed?

A. By the State Department of Motor Vehicles.

Q. You brought certain records here in response to subpoena duces tecum with reference to an automobile? A. That is right.

Q. With reference to 1948 license plates for an automobile; do you have the original and a photostat of it?

A. We have the original records from our files.

(Testimony of Lester Hingsbergen.)

Q. I do not want to go back any further than——

A. 1947.

Q. 1947, with 1948 marked thereon, is that correct? [108]

A. That is right.

Q. What have you in your hand there?

A. I have the registration certificate dated March 31, 1948, with license number 17K120, tab number 1682357 in the name of Leonard F. Leeper.

Q. Read the whole card, everything that is on it.

A. The address is 1014 Clay Street, Oakland; Cadillac Eight automobile; date first sold 7/10/41; date issued 11/26/47; motor number is 5363157; body type five-passenger coupe; year model 1940; model of the car was a 4161; legal owner is the Seaboard Finance Company at 14th and Webster Streets, Oakland, California; and fees paid for 1948, \$17, with penalties \$33.

Q. The registered owner is——

A. Registered owner is Leon F. Leeper.

Q. Leonard F. or Leon?

A. Leonard F. I beg your pardon.

Q. I notice it is a 1947 registration card and yet you say this is a registration for 1948.

A. Yes.

Q. How do you explain that?

A. Well, when they come for the 1947 registration certificate, when they come to our office, they present this to be paid and the 1948 tab is issued on the certificate.

Q. And then you stamp "March 31, 1948"?

(Testimony of Lester Hingsbergen.)

A. That is our stamp for our accounting department; the 1948 [109] certificate is mailed to the registered owner.

Q. So this is the license for 1948?

A. That is right.

Q. You have the photostat there?

A. I have the photostat.

Q. Certified? A. Certified, yes.

Mr. Karesh: I will ask this registration card, Your Honor, be marked for identification next in order. Counsel stipulated that we may offer a photostat instead of the original registration card.

The Court: Very well.

(The photostat of the registration card referred to was thereupon marked United States Exhibit No. 32 for identification.)

Mr. Karesh: That is all. Any questions?

(No counsel for the defendants indicated a desire to question the witness.)

Mr. Karesh: We have one more short witness, the gentleman from the hotel.

OTTO NIELSEN

was called as a witness on behalf of the United States, and being first duly sworn, testified as follows:

The Clerk: Your name is Mr. Nielsen?

A. Yes, sir. [110]

Q. Where do you reside?

A. Hotel Clay-Ten.

Q. Is that in Oakland? A. Oakland.

(Testimony of Otto Nielsen.)

Q. Tenth and Clay Streets in Oakland?

A. That is right.

Q. The hotel faces Clay Street? A. Yes.

Q. Between 10th and 11th, the corner of 10th, and then it is between 10th and 11th; that is right, isn't it? A. That is right.

Q. How many rooms in that hotel? A. 90.

Q. Is there a Room 306 in the hotel?

A. Yes, sir.

Q. Is that on the third floor?

A. Third floor.

Q. Is it far down the corridor from the elevator? A. It is at the corner.

Q. At the other end of the elevator?

A. Yes, sir.

Q. Have you a record of registration for Room 306? Did you bring it here in response to our subpoena? A. Not for 306. For 403.

Q. Did you have a record for 403? [111]

A. Yes.

Q. Who lived in 403 on June 4, 1945?

A. Ray Leeper.

Q. And then when did Mr. Leeper move into another room in the hotel, if he did?

A. He moved into several rooms before he moved into Room 306.

Q. When did he move into Room 306? You have certain records, have you not? A. Yes.

Q. Would you say he was in Room 306 as of August, 1948? A. Yes. [112]

(Testimony of Otto Nielsen.)

Q. You are certain of that? A. Yes, sir.

Q. September, 1948? A. Yes.

Q. And October, 1948? A. Yes, sir.

Q. You were not able to find the registration card, were you? We looked, is that right?

A. Right.

Q. At the hotel you keep a record of phone calls made outside? A. Yes, sir.

Q. Do you have the record of phone calls for the month of October in your book?

A. Yes, I have.

Q. You put those phone calls on a slip of paper?

A. I copied them off from October 1st to November 1st.

Q. 1948? A. 1948.

Q. You did that at my request, is that right?

A. Yes, that is right.

Q. And you put it on the slip of paper, these phone numbers? A. That is right.

Q. These calls were all made from Room 306 from October 1, 1948, to November 1, 1948, is that correct? A. Yes, sir. [113]

Q. You have a notation there October 20, 1948, a call was made to what number from Room 306?

A. Lo-9-5281.

Q. What is that? A. Lo-9-5281.

Q. What does "Lo" mean?

A. Lochhaven, I think.

Q. Lochhaven 9-5281, and there are other telephone calls on this slip of paper? A. Yes.

Q. In other words, there is a record kept of

(Testimony of Otto Nielsen.)

every call sent out from the rooms, is that right?

A. That is right.

Q. Each room does not have a phone of its own, does it? A. Yes, sir.

Q. By that I mean it does not have an independent number of its own; it all goes through the central switchboard of the hotel?

A. That is right.

Q. That is, in the case of Room 306, the phone is connected to the switchboard and all the calls go through that switchboard? A. Yes.

Q. And a record of those phone calls is kept in this book? A. Right. [114]

Q. You brought the book, from that book you copied those entries on that slip of paper from October 1, 1948, to November 1, 1948?

A. That is right.

Q. From Raymond Leeper's room?

A. Yes.

Q. He is charged with those phone calls, is that correct? A. That is right.

Mr. Karesh: We will ask that this slip of paper be marked for identification.

(The paper referred to was thereupon marked U. S. Exhibit 33 for Identification.)

Q. Mr. Nielsen, on the third floor you measured at our request the length of the hall from the elevator down to Room 306? A. 68 feet.

Q. Are you sure it is 68?

A. That is from the elevator.

Q. How far from the end of the hall?

(Testimony of Otto Nielsen.)

A. 73.

Q. Room 306—that veers off from the hallway, does it not? A. Yes, sir.

Q. Did you measure the distance from the hallway to the door, itself?

A. It is about three feet. [115]

Q. Is that from the hinge side or the knob side?

A. That is on the short side.

Q. That is the hinge side?

A. I don't know what the other side would be.

Q. You mean on the hinge side you do not know how long it would be, but how much is the knob side?

A. Three feet. The other would be about two feet long.

Q. Tell me, have you ever ridden in a car with Mr. Leeper? A. Yes, sir.

Q. What kind of car was it?

A. It was a Cadillac, a maroon-colored Cadillac.

Q. How many times?

A. I rode in it once.

Q. He took you in the car and drove it?

A. Yes.

Q. Did he have the keys?

A. I think so, yes.

Q. Tell me, did Mr. Leonard Leeper ever live at the Clay-Ten Hotel? A. No.

Q. I notice there is a registration certificate that says Leonard F. Leeper, 1014 Clay Street, Oakland, California. He never lived at the Clay-Ten Hotel, did he?

(Testimony of Otto Nielsen.)

A. No, Raymond Leeper was the only one who ever lived there.

Mr. Karesh: That is all with this witness. [116]

Mr. Dunning: I have no questions.

Cross-Examination

By Mr. Deasy:

Q. Mr. Nielsen, calling your attention to Government's Exhibit No. 33, this, as I understand it, contains all of the phone calls made from Room 306 between October 1, 1948, to and including November 1, 1948, is that correct?

A. That is right.

Q. And every phone call, both local and long distance, are made through your switchboard, is that correct?

A. Yes, sir.

Q. And every phone call that is made through your switchboard is recorded, is that correct?

A. Yes, sir.

Q. Now, have you the original record of the telephone for October 31, 1948?

A. Yes.

Q. May I see it for one second, please?

A. The 31st would start here. I think it is on this next page (producing document).

Q. Were you, yourself, on duty on October 31, 1948?

A. No, sir, I don't work behind the desk, only about an hour a day at noon time.

Q. I am going to call your attention to this record of October 31, 1948, and ask you if there is any telephone calls which originated in Room 306, according to this record, please?

(Testimony of Otto Nielsen.)

A. On the 31st? [117]

Q. Yes, please.

A. No, sir, I don't have any on the 31st.

Q. I am going to ask you particularly about October 31, 1948, if there was a telephone call to Templebar 2-3600 originating from Room 306.

A. That was called from the office downstairs, not from 306.

Q. That wouldn't be called from 306?

A. It wasn't called from 306. It is checked right here.

Mr. Deasy: That is fine. That is all.

Redirect Examination

By Mr. Karesh:

Q. What is that you said?

A. It was called from the office downstairs.

Q. There was a call sent——

A. It was called from the office downstairs, not 306.

Q. Templebar 2-3600?

A. Templebar 2-3600.

Q. Came in from the police department, not someone downstairs calling and asking you to call the——

A. No, Bertin wouldn't charge a call——

Q. He wouldn't charge a police call to 306, would he? A. No, sir, he would not.

Q. And therefore it wouldn't appear as coming from 306? A. No.

Q. You have the number Templebar 2-3600?

A. That is right. [118]

(Testimony of Otto Nielsen.)

Q. That is the police department's number?

A. Yes, sir.

Recross-Examination

By Mr. Deasy:

Q. Will you look at 717 on that date and see if there is any call?

A. That is the office call.

Q. 717? A. The office phone.

Q. Is the office phone, is that correct?

A. Yes.

Q. And you have how many calls from 717 to Templebar 2-3600? Two of them.

Mr. Deasy: That is all.

(Thereupon an adjournment was taken until tomorrow, Wednesday, June 8, 1949, at 10 o'clock a.m.) [119]

Wednesday, June 8, 1949

WILLIAM H. GRADY

called as a witness on behalf of the Government and having been first duly sworn testified as follows:

The Clerk: What is your full name?

A. William H. Grady.

Direct Examination

By Mr. Karesh:

Q. Mr. Grady, you are a special agent of the Bureau of Narcotics of the United States of America? A. Yes, sir.

Q. How long have you been an agent?

(Testimony of William H. Grady.)

A. Approximately seven years.

Q. You are assigned to the San Francisco office?

A. Yes, sir.

Q. Mr. White, the gentleman who sits behind me, is your district supervisor? A. Yes, sir.

Q. You work under his direction?

A. Yes, sir.

Q. Do you know Mr. Burtin? A. Yes, sir.

Q. Is he an agent? A. Yes, sir.

Q. Assigned to the San Francisco office? [120]

A. Yes, sir.

Q. Do you know Mr. Cass? A. Yes, sir.

Q. He likewise was assigned to the office?

A. Yes, sir.

Q. Both of these gentlemen have worked with you on cases? A. Yes, sir.

Q. Calling your attention to October 31, 1948, were you employed by the Bureau of Narcotics as a special agent? A. Yes, sir.

Q. On that day did you see an informer?

A. Yes, sir.

Q. Where did you first see him and with whom?

A. I first saw the informer in San Francisco with Mr. White.

Q. About what time, if you remember?

A. Approximately three o'clock, two-thirty to three o'clock.

Q. Where did the informer go?

A. The informer left my view on Bush Street in San Francisco with Mr. White.

(Testimony of William H. Grady.)

Q. When was the next time that you saw the informer?

A. The next time I saw the informer was in Oakland, near the Coca-Cola place out on 14th Street, in Oakland. He was in an automobile with Mr. White.

Q. Thereafter did you see where the informer went? [121]

A. Shortly thereafter I saw the informer and Mr. White enter the Clay-Ten Hotel on Clay Street, in Oakland, California.

Q. I show you United States Exhibit 13 for Identification, Hotel Clay-Ten. Is that the hotel which the informer entered with Mr. White?

A. Yes, sir.

Q. How did you get to Oakland?

A. I rode in a Government automobile with agents Cass and Burtin.

Q. Where did you park your car?

A. I parked the car on Clay Street, facing the Clay-Ten Hotel.

Q. Is that near Tenth?

A. No, between Eleventh and Twelfth.

Q. Then where did you go?

A. I walked down the street, after I observed Mr. White and the informer enter the Clay-Ten Hotel, and I walked down the street past the Clay-Ten Hotel, near the intersection of Tenth and Clay Streets, on Clay Street.

Q. By passing the hotel you mean you passed the entrance to the hotel?

(Testimony of William H. Grady.)

A. I passed the entrance to the hotel.

Q. Did you then stop? A. Yes, sir.

Q. Who was with you if anyone at that time?

A. Agent Burtin was with me. [122]

Mr. Deasy: I am sorry I did not hear the last.

The Witness: Agent Burtin was with me.

Q. (By Mr. Karesh): The United States Exhibit 13: Will you with this red pencil place on this photograph where you and Agent Burtin were standing? What mark have you placed there?

A. Just a straight mark in a white spot underneath.

Q. Do you want to put your initial there? Could you do it with that? It is not a very good pencil, is it? You have written the word "W.H.G." I am going to show you a photograph of an automobile. Do you recognize this photograph of an automobile? A. Yes, sir.

Q. What is the license number of the automobile? A. 17-K-120.

Q. What kind of automobile is it?

A. It is a Cadillac automobile.

Q. What color automobile, if you remember?

A. Maroon.

Q. Where did you first see that automobile?

A. I first saw that automobile on the 31st day of October, parked on Clay Street, near the corner of Tenth Street, in Oakland, California.

Q. Is that where you were standing with Agent Burtin? A. Yes, sir.

(Testimony of William H. Grady.)

Q. Was there anyone in the car when you first saw it? A. No, sir. [123]

Q. Was the car parked there? A. Yes, sir.

Q. Did you see it after the informer had entered the hotel with Colonel White? A. Yes, sir.

Q. Did you see anyone enter that automobile?

A. Yes, sir.

Q. Who entered it?

A. I saw a man who I know now as James Ballard, the defendant in this case.

Q. He entered the automobile? A. Yes, sir.

Q. At that time you took down the license number when Mr. Ballard entered the automobile, is that correct?

A. As he drove away in the automobile?

Q. You took the license number down?

A. Yes, sir.

Q. At the time that Mr. Ballard entered the automobile, had you observed the informant again?

A. Yes, sir.

Q. Was that before or after Mr. Ballard entered the automobile?

A. After Mr. Ballard entered the automobile.

Q. From where did Mr. Ballard come when he entered the automobile?

A. From the Clay-Ten Hotel. [124]

Q. How long after Mr. Ballard entered the Clay-Ten Hotel did you see the informer come out of the hotel?

A. After Mr. Ballard entered the Clay-Ten, entered the automobile and drove away——

(Testimony of William H. Grady.)

Q. Yes.

A. It was just a very few moments, perhaps five minutes—it might have been a shorter time than that.

Q. Which way did the informer go, if you remember?

A. The informer walked towards Eleventh Street, down Clay Street towards Eleventh Street.

Q. Did you or any of the other agents follow him? A. Agent Burtin left at that time.

Q. In what direction did Agent Burtin go?

A. Walked in the same direction the informer was walking in.

Q. Do you mean toward Eleventh Street?

A. Toward Eleventh Street.

Q. What did you do?

A. I remained on Clay Street near the corner of Tenth Street.

Q. Thereafter what did you do?

A. Shortly thereafter I observed the defendant Ballard, McDonough and Ingoglia in this same automobile. They entered Clay Street from Tenth Street, making a left turn into Clay Street.

Q. Are you sure it was a left turn, or a right turn?

A. From Tenth Street it was a left turn. [125]

Q. Go ahead.

A. Mr. Ballard was driving the automobile. Mr. McDonough was in the middle, and Mr. Ingoglia was on the outside, on the side closest to me as the car drove by.

(Testimony of William H. Grady.)

Q. Did you see them stop the car?

A. Yes, sir.

Q. Where did they stop the car?

A. They stopped the car on Clay Street, near Eleventh Street.

Q. Did you follow, walk up toward Eleventh Street? A. Yes, sir.

Q. And then what happened?

A. As they—as Ingoglia left the car on the sidewalk side, and Ballard left the car on the street side, I observed Agent Burtin walking along the sidewalk, approximately ten or fifteen feet past the car at that time, at the time that they had left the car.

Q. Where did McDonough go?

A. McDonough remained in the car.

Q. Did he sit in the middle where he had been, or did he slide over into the driver's seat?

A. He was under the wheel in the driver's seat.

Q. Then what happened?

A. Ingoglia and Ballard entered the Clay-Ten Hotel.

Q. Go on.

A. Shortly thereafter I walked with Agent Burtin, walked up Clay [126] Street, and beyond Eleventh to where the Government automobile was parked.

Q. And where was the Government automobile parked?

A. It was parked on Clay Street between Elev-

(Testimony of William H. Grady.)

enth and Twelfth Streets, on the opposite side of the street from the Clay-Ten Hotel.

Q. Did anything unusual happen at that time?

A. At that time a police car drove up and stopped at the front entrance of the Clay-Ten Hotel.

Q. Will you tell me how long it was from the time you saw Ballard and Ingoglia enter the hotel until the police car came?

A. Approximately five minutes.

Q. Could it have been more?

A. Yes, it could have been seven or eight minutes.

Q. That is to the best of your recollection?

A. Yes.

Q. Did you observe McDonough when the first police car came? A. Yes, sir.

Q. Did it have the marking of a police car? Was it obvious that it was a police car?

A. It was obvious to me.

Q. What do you mean by obvious to you?

A. It had the red lights, the red light on the top of the car; it was one of these blue Fords with black fenders and a star painted on the side of the car. [127]

Q. From what direction did that police car from?

A. From the direction of Tenth Street.

Q. Where did it park?

A. It parked directly in front of the Clay-Ten Hotel.

(Testimony of William H. Grady.)

Q. Driving toward Eleventh?

A. Driving toward Eleventh.

Q. Did you observe McDonough at that time?

A. Yes, sir.

Q. What did he do, if anything, with relation to the car? Did he sit there, or did he get out?

A. McDonough remained in the automobile.

Q. Did you see another police car?

A. Yes, sir.

Q. Where did that car come from?

A. That car came from the direction of Eleventh Street, down Clay, and parked on the wrong side of Clay Street in front of the Clay-ten Hotel, both police cars facing each other.

Q. Did the second police car pass the car where McDonough was seated? A. Yes, sir.

Q. Did the police officers get out of the car?

A. Yes, sir.

Q. Did you see McDonough do anything at that time when the second police car came?

A. Yes, sir. McDonough left the Cadillac car and walked around [128] the corner of Eleventh Street.

Q. How far around the corner?

A. About, I would say, approximately six feet, six to eight feet.

Q. Was there anything unusual about his actions?

A. Yes, sir. He returned several times—I would

(Testimony of William H. Grady.)

say three or four times that he returned and peered around the corner of the building, looking down toward the Clay-Ten Hotel.

Q. You mean after the second police car came he walked to the corner, looked around, and then backed around the corner, is that correct?

A. Yes, sir.

Q. Then what did you do, Mr. Grady?

A. In the meantime Agent Burtin had gone down to the hotel and he waved, and Agent Cass and I drove in the Government automobile down Clay Street opposite—to just the opposite side of the entrance to the Clay-Ten Hotel.

Q. Who entered the hotel first? The police officers or Agent Burtin?

A. The police officers.

Q. How many police officers were in each car?

A. One.

Q. And then one officer from each car entered the hotel, followed by Burtin and then you and Agent Cass went down to the hotel, and where did you go? [129]

A. I left the automobile and Agent Cass—we double-parked. Agent Cass stayed in the Government automobile. I crossed over, met Agent Burtin, and went upstairs together.

Q. Where did you go?

A. I went to room 306.

Q. Whom did you see in room 306?

A. I saw Mr. White, and I saw two police officers.

(Testimony of William H. Grady.)

Q. By Mr. White you mean your district supervisor?
A. My district supervisor.

Q. Go ahead.

A. And I saw the defendants Leeper, Ballard and Ingoglia.

Q. By Leeper—do you recognize Leeper here?

A. Yes, sir, this is Mr. Leeper right on the end.

Q. The gentleman with the flower?

A. Yes, sir.

Mr. Karesh: Let the record show that the witness has identified the defendant, Mr. Leeper.

Q. And which is Ballard?

A. The next one.

Mr. Karesh: May the record show that the defendant Ballard has been identified by the witness.

Q. And Ingoglia?

A. Ingoglia is the fourth one.

Mr. Karesh: May the record show the witness has identified the defendant Ingoglia. [130]

Q. Now, the man in the automobile 17-K-120—do you identify that—that you say was peering around the corner after getting out of the car, can you identify him?

A. Yes, sir, Mr. McDonough, the third man between Mr. Ballard and Mr. Ingoglia.

Mr. Karesh: May the record show that this witness has identified the defendant McDonough?

May we offer for identification this car, Cadillac 17-K-120?

The Court: It may be identified.

(Testimony of William H. Grady.)

(The photograph referred to was thereupon marked U. S. Exhibit 34 For Identification.)

Q. (By Mr. Karesh): What happened in the hotel room?

A. When I walked into the hotel room and saw Mr. Leeper, Mr. Ingoglia and Mr. Ballard, I immediately asked one of the police officers to accompany me, and I left with the police officer and went down to the corner where the Cadillac automobile was parked.

Q. Was McDonough near the Cadillac automobile at that time?

A. No, sir, the keys to the car were lying in the front seat of the automobile. I looked in several of the bars around the corner but did not see Mr. McDonough.

Q. Can you explain why you did not arrest McDonough when you saw him sitting in the automobile?

Mr. Kernes: If your Honor please, I am going to object to that as calling for the conclusion of the witness. [131]

The Court: Sustained.

Q. (By Mr. Karesh): When you entered the hotel, was that the first time you knew that the drugs had been delivered to Mr. White?

A. When I entered the hotel room.

Q. Is that right? A. Yes, sir.

Q. And then you say you went down to the police station? Did you go with the officers, or what?

(Testimony of William H. Grady.)

A. I went with one officer and went downstairs and looked around the block, in the bars, and in that vicinity, but did not see Mr. McDonough. I then returned to the room and saw—talked with Mr. White and the other agents, and saw a bag containing some white envelopes.

Q. Where were the defendants at that time?

A. The defendants were in the room.

Q. Still there? A. Yes, sir.

Q. I thought you said they were taken down to the jail, or something?

A. Not at that time. They were after.

Q. Were they taken down to the jail before you went down to look to see whether you could find McDonough?

A. Oh, no, they were still in the room. I just went to the room, went right back down to look for McDonough, couldn't find him, [132] and then they were taken to the jail.

Q. Who took them to the jail, if you know?

A. I don't remember.

Q. Then what did you do?

A. I then went to a police officer in Oakland, Police Officer Hand, and gave him a description of the man who was standing at the corner.

Q. You mean McDonough?

A. McDonough.

Q. Did you attempt to find McDonough thereafter? A. Yes, sir.

Q. What efforts did you use to find McDonough?

(Testimony of William H. Grady.)

A. Well, we went to Souza's Bar, on, I believe it is, Twelfth and Franklin, in Oakland, and then talked to Mr. Souza, there, and he said that McDonough had been staying——

Q. No, that would be hearsay. What I am trying to find out, did you make any effort to locate Mr. McDonough? A. Yes, sir.

Q. Without relating any conversations, just tell us where you went to locate him, whom you spoke to, without relating what was said.

A. First I went to Police Officer Hand, and then from his place went over to Souza's Bar, and from Souza's Bar I went to Souza's home.

Q. Go ahead.

A. At that time I left Oakland and returned to San Francisco. [133]

Q. Do you know when it was that McDonough was apprehended, or when he surrendered?

A. Approximately November 5th.

Q. Did your office make an intense search to find him during that time?

A. Yes, we notified several people and attempted to locate the defendant.

Q. And you were in San Francisco, is that right? A. Yes, sir.

Q. Do you know whether any accounts of the fact that Mr. McDonough was wanted appeared in the newspapers?

A. Yes, sir; yes, sir, I read an account of the names of all of the defendants in this case.

(Testimony of William H. Grady.)

Q. Was a complaint sworn for McDonough's arrest? A. Yes, sir.

Q. When? Do you recall?

A. The next day, on November 1st.

Q. And the accounts appeared in the daily newspapers saying McDonough was charged with violation of the narcotic statutes, is that correct?

A. Yes, sir.

Q. And you say he surrendered on November 5th? A. Yes, sir.

Q. 1948. Calling your attention to these envelopes, United States Exhibits 1 through 12 For Identification, will you examine [134] those envelopes, each one of them separately, and tell me whether your initials appear thereon.

A. Yes, sir, my initials are on each package.

Q. Who else's initials are on there?

A. The initials of Mr. White, Mr. Burtin, Mr. Cass; the chemists' initials, Mr. Hubach, Mr. Love, Mr. Stribling, and Mr. Mallory.

Q. You had better look at each package and tell me whether the initials you read out appear on each envelope.

A. Mr. Stribling's initials does not seem to appear on this package, the chemist.

Q. Who? A. Mr. Stribling, the chemist.

Q. Stribling or Hubach?

A. Hubach is one of the chemists, but Stribling is another one.

Q. The initials which you read appear on all of

(Testimony of William H. Grady.)

these envelopes that you have just examined?

A. Yes, sir.

Q. Examine U. S. Exhibits 20 through 31, these envelopes, and tell me whether your initials appear thereon.

A. Yes, sir.

Q. There are other initials on them?

A. Yes, sir.

Q. Examine this paper and tell me whether your initials appear thereon. [135]

A. Yes, sir, they do.

Mr. Karesh: This is United States Exhibit No. 18 which I have just shown the witness.

Q. Examine United States Exhibit No. 19 For Identification and tell me whether you have ever seen that before, the contents.

A. Yes, sir.

Q. You say that your initials are on U. S. Exhibit 12 For Identification and U. S. Exhibits 20 through 31 For Identification, and U. S. Exhibit No. 18 For Identification; you have also identified the contents of U. S. Exhibit No. 19 For Identification. Now, tell the court and the jury under what circumstances you placed your initials upon these various packages, and under what circumstances you examined U. S. Exhibit 19 For Identification.

A. The packages containing the drugs No. 1 to 12—

Q. Yes, sir.

A. The packages containing the drugs were, when I put my initials on those, at the time Agent Cass removed—

(Testimony of William H. Grady.)

Q. What date was this?

A. This was on November 1st.

Q. Where?

A. In the narcotic office, Room 2104, 100 McAllister Street, San Francisco.

Q. Who was present?

A. Mr. White and Mr. Cass. [136]

Q. Go on.

A. At that time the narcotics——

Q. Bear in mind that this is 18, the paper sack.

A. When Mr. Cass first brought the package from the vault into the room, all of the envelopes—these brown ones, what are the numbers on those?

Q. You mean these discolored ones?

A. Yes.

Q. 20 through 31.

A. 12 of those, this brown paper bag—is that Exhibit 19?

Q. The brown paper bag is Exhibit 18.

A. 18—well, Exhibit 18 contained these twelve envelopes.

Q. Anything in these twelve envelopes, 20 through 31?

A. Yes, sir, these cellophane bags were on the inside.

Q. One cellophane bags were on the inside.

Q. One cellophane bag on the inside of each of these envelopes 20 through 31; the cellophane bags you are now speaking about were in the package 19

(Testimony of William H. Grady.)

For Identification. Who broke the envelopes or cut them open? A. Mr. Cass.

Q. What did he do then?

A. He took out the contents of each envelope.

Q. The cellophane bag?

A. The cellophane bag, emptied the cellophane bag onto a sheet of paper, weighed the narcotics, and then put them into [137] the other envelopes, the other twelve envelopes. As he emptied each envelope and cellophane bag, he turned the bags over to me.

Q. As I understand it, he placed the contents of the original envelopes in glassine bags, inside the white envelopes U. S. Exhibits 1 through 12 For Identification, right? A. Yes, sir.

Q. In other words, in every one of these envelopes——

A. There was a cellophane bag inside of it.

Q. That is right. The contents of the cellophane bag inside one of these envelopes went into one of the white envelopes? A. That is correct.

Q. Then what happened?

A. Mr. White and Agent Cass and myself initialed both sets of envelopes, and I then in the presence of Mr. White and Mr. Cass, treated these envelopes.

Q. By “these envelopes” you do not mean 1 through 12, the white envelopes; you mean 20 through 31, is that correct?

(Testimony of William H. Grady.)

A. 20 through 31, yes, and also the cellophane wrappers.

Q. Contained in U. S. Exhibit 19 For Identification?
A. 19, and the paper bag.

Q. U. S. Exhibit 18 For Identification, is that correct?
A. Yes, sir.

Q. Now, there are discolorations on the bag that came from the chemical treatment.

A. Yes, sir, that came from the silver nitrate treatment to develop any latent fingerprints that were on the package. [138]

Q. What was the color of these envelopes 20 to 31 from which the narcotics were originally taken out of the bag?

A. These envelopes were white, even whiter than this—this is 25—the back of Exhibit 25 has darkened up somewhat, but of course, it is not as dark as the others, but it was a white envelope.

Q. Was the color of the envelopes the same?

A. Yes.

Q. All the 12 envelopes the same?

A. All 12 envelopes were the same color and appearance.

Q. All the same size, length and width?

A. Yes, sir.

Q. Were you wearing gloves when you went through the process of treating these envelopes and this paper bag?
A. Yes, sir.

Q. And what result, as far as fingerprints were concerned?

(Testimony of William H. Grady.)

A. There are—several fingerprints were developed, several smudges and some—a few that were legible, that really could be read.

Q. Now, then, you photographed a certain print, latent print from one of these envelopes?

A. Yes, sir.

Q. And I think that is U. S. Exhibit 31 for identification. Will you examine it and tell me if that is the one from which [139] you photographed the latent print thereon?

A. Well, I photographed—I have several photographs, but this is one of the ones that were photographed.

Q. You are referring to a print on U. S. Exhibit 31 that has a green circle, is that correct?

A. Yes.

Q. Is your initials alongside of it?

A. Yes, sir.

Q. And what did you do with the photographs?

A. The photographs were submitted through official channels to our New York office.

Q. And do you know who in your New York office examines prints?

A. They were turned over to Mr. Green of the Alcohol Tax Unit, who is the expert on fingerprints for our office in New York.

Q. You sent the photographs of the prints back to New York and then what happened? Did Mr. Green come out to San Francisco?

A. Yes, sir.

(Testimony of William H. Grady.)

Q. And did you then give to Mr. Green to take back to New York with him U. S. Exhibit 31 for identification?

A. Well, this is one of the envelopes that I gave to Mr. Green when he was here from New York.

Q. How many more did you give to him besides that? A. Four others.

Q. He took U. S. Exhibit 31 and four other of these envelopes back to New York, is that right?

A. Yes, sir, that is correct.

Q. And when did you see the envelopes again, including U. S. Exhibit 31 for identification?

A. On the 6th of June of this year.

Q. Now, you treat—we will just refer now to U. S. Exhibit 31 for identification, you say you treat the envelope to find prints, latent prints?

A. Yes, sir, we used—in our office we use approximately a one per cent of silver nitrate, and the chemical action of silver nitrate combines with the salt in the perspiration that is on the skin, forming a white substance, silver chloride, and that is treated with sunlight and it breaks down into silver and chloride and the silver darkens and you have as a result a pattern that marks out the pattern on the skin.

Q. Now, let me ask you, when you treat this print here which is encircled with green and I put my fingers on it, that can't rub off, can it?

A. No.

(Testimony of William H. Grady.)

Q. How long should that print remain after it is treated?

A. It should remain for five or ten years if it isn't put in bright sunlight.

Q. But if I put my finger over it, it won't rub out or ruin that latent print, will it?

A. No, sir.

Q. But if the thing had not been treated and I placed my finger [141] there and pressed it firmly, I might obliterate the original print, is that right?

A. Yes.

Mr. Dunning: May we see that exhibit?

Mr. Karesh: Yes (handing document to counsel).

Q. Mr. Grady, just for the purposes of clarification, can you tell me how soon after the informer came out of the hotel would you say Ballard came out of that Cadillac automobile 17-K-120?

A. I would say approximately three minutes, five minutes—I wouldn't give a definite statement as to the exact minutes, but it was three minutes or five minutes, a very short time.

Q. That is the best of your recollection?

A. That is right.

Q. Now, I just want to get this straight: Ballard came out first and then the informer came out?

A. Yes, sir.

Q. In other words, Ballard came out and entered the car and about three minutes later or five minutes the informer came out and you followed him?

(Testimony of William H. Grady.)

A. He came out; I didn't follow him, I saw him leave toward Eleventh Street and I saw Agent Burtin follow him.

Mr. Karesh: That is all, Mr. Grady.

Cross-Examination

By Mr. Kernes:

Q. A few questions, Mr. Grady. I believe it was your testimony that you saw the informer, Mr. Mallibee, [142] on the 31st day of October of last year?

A. On the 31st day of October? Yes, sir, that is correct.

Q. And do you recall what time of day that was?

A. I would say from 2:30 to 3:00 o'clock.

Q. And do you recall just where that was?

A. I don't know the address. It was on Bush Street.

Q. I see. Did you drive from your office on McAllister Street to Bush Street?

A. No, sir. It was on a Sunday. I came from home.

Q. Now, were you called to come from home?

A. Yes, sir.

Q. That particular day? A. Yes, sir.

Q. Did you know prior to the 31st day of October 1948 that you were going to go out that afternoon? A. No, sir.

A. Yes, sir—a government car.

Q. I see. Did you drive your car down?

(Testimony of William H. Grady.)

Q. You drove the government car?

A. Yes.

Q. In other words, you drive the government car home so you can use it if you need to?

A. Yes, sir.

Q. Did you pick up Agent Burtin?

A. Yes, sir. [143]

Q. And Agent Cass?

A. No, Agent Cass came in his automobile. He has a government automobile.

Q. I see. Did you talk to Col. White—that is your district supervisor?

A. Well, we met at his place on Bush Street.

Q. You met at the Colonel's place?

A. Yes.

Q. It was the Colonel's address? A. Yes.

Q. He resides on Bush Street?

A. He did at that time.

Q. I see. He was your district supervisor, is that correct? A. Yes, sir.

Q. You don't recall his address, do you?

A. No, I couldn't—I was only up there that one time.

Q. I see. Do you recall his phone number?

A. No, sir.

Q. Mr. Grady, how long have you been a special agent for the Narcotics Bureau?

A. Approximately seven years.

Q. And how long have you been in the San Francisco office? A. Seven years.

(Testimony of William H. Grady.)

Q. Have you at any time during those seven years had occasion to know or hear of—and I specifically refer to this seven years [144] immediately prior to October 31, 1948—have you had occasion to know or hear of the defendant Patrick McDonough? A. No, sir.

Q. Did Agent Cass drive his car over to Oakland?

A. Mr. Cass—we left my car on Bush Street and Agent Burtin and myself went to Oakland with Mr. Cass.

Q. When you arrived at Bush Street, Mr. Grady, did you go up into the apartment itself?

A. Yes, sir.

Q. And do you recall—was that an apartment, by the way? A. Yes, that was an apartment.

Q. And could you recall what floor that apartment was on?

A. It was walking distance. I think it was on the second floor.

Q. I see. About how many rooms does that apartment have?

A. It is my recollection it had one room and a kitchen and a bath.

Q. That was your district supervisor White's apartment?

A. I think he had a temporary apartment while he was looking for another one. That is my understanding.

Q. I see. Now, in whose automobile did Mr. White drive to Oakland?

(Testimony of William H. Grady.)

A. I don't know whose automobile it was, but Mallibee was driving.

Q. Mallibee was driving. Mallibee was the informer, correct? Isn't that correct? [145]

A. Yes, that is correct. That is the name I knew him by.

Q. The government cars, they are not marked any specific way, are they? A. No, sir.

Q. So actually unless you absolutely know the individual car, you couldn't tell it from any other car, could you? A. No.

Q. Did you follow Mr. Mallibee and Mr. White or did they follow you driving across to Oakland?

A. I really don't know. It is my recollection that we made arrangements to meet by the Coca-Cola place on Fourteenth Street in Oakland.

Q. That would be Fourteenth and Peralta Streets, is that correct?

A. Yes, just after you turn off the lower highway there. I think it is Peralta.

Q. And that was on the bridge approach coming off in Oakland, is that correct? A. Yes.

Q. Mr. Grady, you did meet there. Did you park your car at the time? A. No.

Q. Was there any conversation had with either Mr. Mallibee or Mr. White at the time?

A. No. As I recall, Mr. Cass blew the horn and they just went [146] ahead and we followed.

Q. Mr. Cass was driving? A. Yes.

Q. And did you follow Mr. Mallibee and Mr.

(Testimony of William H. Grady.)

and Eleventh, is it not, and the building is actually the corner of Tenth and Clay?

A. Yes, sir, that is correct.

Q. And you parked your car between Eleventh and Twelfth on Clay, is that correct?

A. Yes.

Q. On which side of the street did you park your car, Mr. Grady?

A. On the opposite side from the hotel.

Q. On the opposite side. Did you remain by your automobile?

A. At what time, counsel—when we first came up?

Q. Yes. A. No.

Q. I believe you testified, if I am not mistaken, that you and Agent Burtin went walking up the street toward the hotel, did you not? A. Yes.

Q. And you observed a Cadillac automobile?

A. After we had observed Mr. White and the informer enter the Clay-Ten Hotel, we observed this Cadillac automobile. [149]

Q. Did you see the Cadillac automobile before Mr. White and Mr. Mallibee entered the hotel?

A. No, sir.

Q. Now, do you recall just where that Cadillac automobile was parked? A. Yes, sir.

Q. Where, sir?

A. Right near the corner of Tenth Street on Clay Street, facing Eleventh.

Q. Was this the first automobile parked near that corner?

(Testimony of William H. Grady.)

A. It was the first automobile that was parked there. Whether it was parked in the first zone or not, I wouldn't say.

Q. In other words, Mr. Grady, there was no automobile parked immediately behind it toward Tenth Street? A. No.

Q. Now, in driving up to the vicinity of the Clay-Ten Hotel, to Tenth and Eleventh on Clay, did you drive on Clay Street?

A. When Mr. Cass was driving and we entered the vicinity?

Q. That is right. A. I don't know.

Q. As Mr. Cass drove in that vicinity, did you have occasion to be on the lookout for the Cadillac automobile? A. No, sir.

Q. Those were your instructions, were they not?

A. The instructions—we didn't drive by the hotel, as I recall [150] it, counsel. We drove up between Eleventh and Twelfth and parked the automobile and we immediately left the automobile.

Q. In other words, you drove up Clay Street toward Tenth?

A. Toward the hotel. That is my recollection.

Q. Now, then, prior to this time had you ever seen the defendant Ballard?

A. No, sir—prior to the time that I came to Oakland?

Q. Prior to October 31, 1948. A. No, sir.

Q. Or the defendant Ingoglia?

A. Well, I am not——

(Testimony of William H. Grady.)

Q. Had you ever seen him, sir?

A. What?

Q. Had you ever seen him?

A. I can't say definitely. I am not sure whether I saw him or not.

Q. All right. Now, it was your testimony, sir, was it not, that Mr. Mallibee and Mr. White entered the hotel together?

A. Yes, sir.

Q. Do you know where Mr. Mallibee parked the automobile he was driving?

A. Over there around Eleventh Street. Whether it was on Clay—I believe it was on Clay just a little above Eleventh.

Q. That would be on Clay Street between Eleventh and Tenth?

A. I might be wrong on that, but it was right around the corner [151] somewhere, is my recollection.

Q. Did you see the automobile?

A. I saw the automobile on the way over.

Q. Did you see him park it?

A. No.

Q. You did, however, testify that you saw Mr. White and Mr. Mallibee walk towards the entrance of the hotel.

A. Yes.

Q. I believe you further testified that you and Agent Burtin followed Mr. Mallibee and Mr. White, is that correct?

A. Followed them to the hotel?

Q. As they were walking to the hotel.

A. Yes, I believe that is correct.

(Testimony of William H. Grady.)

Q. Now, were you walking toward the hotel when Mr. Mallibee and Mr. White entered the hotel?

A. Yes, sir.

Q. Did you at that time investigate the vicinity for any Cadillac automobiles?

A. We didn't leave the vicinity of Clay Street between Tenth and Eleventh. The information was—according to the information that Mr. White had given me, the automobile would be parked on Clay Street.

Q. In other words, from the information that you had, you knew that if the Cadillac was going to be there, it would have been parked on Clay Street, is that correct? That is in accordance [152] with the information given you by Mr. White in the apartment on Bush Street, is that correct?

A. Yes, the information was that there was a Cadillac automobile involved in this deal and that it quite possibly would be used—it quite possibly would be parked on Clay Street near the hotel.

Q. That was your testimony that a short period of time elapsed after Mr. Mallibee and Mr. White entered the hotel when the defendant Ballard came out, is that correct? A. Yes, sir.

Q. About how long a period of time—I will withdraw that. Did you or Agent Burtin or Agent Cass, of your knowledge, follow that Cadillac automobile when it drove away? A. I didn't follow it.

Q. Did you know what was going to happen in the vicinity of Clay and Tenth on that afternoon, of

(Testimony of William H. Grady.)

your own knowledge?

A. Only what Mr. White had told me.

Q. Now, that was what, again, sir?

A. The only thing I knew is what Mr. White had told me in the apartment in San Francisco on Bush Street.

Q. And I believe you have testified that that was with regard to the Cadillac automobile?

A. Yes.

Q. But you didn't know what was going to happen other than look for that automobile, did you?

A. Naturally I knew there was going to be a narcotic investigation.

Q. Naturally, being a narcotic agent, but did you know what was going to happen? A. No.

Q. And this Cadillac automobile drove away after Mr. Mallibee and Mr. White entered the hotel, is that correct? A. Yes, that is correct.

Q. And that is the Cadillac automobile you were watching, is that correct?

A. I wasn't specifically watching it, I was standing on the street, I saw a Cadillac automobile, I noticed the car and stood around waiting for something to happen.

Q. In connection with that Cadillac automobile?

A. In connection with narcotics.

Q. You were interested in that Cadillac automobile?

Mr. Karesh: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

(Testimony of William H. Grady.)

A. I was interested in the Cadillac automobile only in so far as that it might lead me to a narcotic violation—the movements of the car might furnish me with information that would aid me in this investigation.

Q. And your instructions, of course, were to investigate and attempt to find a Cadillac automobile on that block, is that [154] correct?

A. No, sir, the instructions that I had were that a Cadillac automobile might be used in this violation of the narcotic laws and that I should keep that information in mind as I made my observations in front of the hotel.

Q. Now, Mr. Grady, when you saw a person or a man leave that hotel, someone you had not known up to that time, and enter that automobile, weren't you interested in that?

A. Yes, mildly, you might say I was mildly interested in it.

Q. Not sufficient to make you get up and want to follow it, is that correct? A. No, sir.

Q. Now, then, from the period of time that that automobile pulled away from the vicinity of Clay and Tenth, how long a period of time elapsed until Mr. Mallibee came out of the hotel? I believe you testified he did.

A. Oh, yes, he came out of the hotel. I would say approximately five minutes. It could be a few minutes either way, but I think three or five minutes.

(Testimony of William H. Grady.)

Q. Now, when Mr. Mallibee left the entrance of that hotel on Clay Street just midway or approximately midway between Tenth and Eleventh, where were you, sir?

A. I was right along in here where I have the red line, counsel, (indicating on photograph).

Q. I see. And where was Agent Burtin? [155]

A. He was standing right beside me.

Q. And Agent Cass?

A. I didn't see Agent Cass at that time, but I presume he was in the automobile.

Q. Did you see where Mr. Mallibee went?

A. I saw Mr. Mallibee walk to the corner of Eleventh and cross the corner of Eleventh.

Q. That is cross Eleventh on Clay?

A. On Clay.

Q. And then where did he go?

A. I don't know where he went from there.

Q. Do you know whether or not he turned on Eleventh? A. No, I can't say.

Q. I believe it was your testimony that Agent Burtin followed him?

A. Agent Burtin left me in the same direction that the informer was walking.

Q. Now, you have testified that a Cadillac automobile came up again, is that correct, drove up in front of the hotel?

A. The same Cadillac automobile.

Q. When you saw that automobile, the automobile that you were mildly interested in, Agent

(Testimony of William H. Grady.)

Grady, you were interested sufficiently to take a license number, were you not? A. Oh, yes.

Q. And to fix a description of it in your mind?

A. Oh, yes. That is a very common occurrence with me.

Q. And you recognized it as coming up again?

A. Yes, sir.

Q. I believe it was your testimony that the defendants Ingoglia, Ballard and McDonough were in that automobile, is that correct?

A. Ingoglia, Ballard and McDonough, yes, that is correct.

Q. Now, at the time that automobile drove up, were you still in the same position near the barber-shop at the entrance of the hotel on Clay Street?

A. Back down here, I think that is a bar—well, it was just beyond the barbershop.

Q. In other words, the entrance to the hotel was between you and the Cadillac when the Cadillac parked, is that correct? A. No, sir.

Q. Now, wasn't it your testimony that when that Cadillac automobile drove up for the second time it parked near the intersection of Eleventh and Clay Streets? A. That is correct.

Q. Now, wasn't it your further testimony that at the time it drove up and at the time Mr. Mallibee left the hotel, you were standing near the corner of Tenth and Clay?

A. I was standing at Tenth and Clay here (indicating), and when the automobile first left it was

(Testimony of William H. Grady.)

parked just about where this light car is along right in here. This is where I was standing, and when it returned it parked up here near the corner [157] (indicating).

Q. What I want to know, Mr. Grady, is where you were standing when that Cadillac returned.

A. Down on this corner, down in front of the bar here (indicating on photograph).

Q. In other words, you were near Tenth and Clay? A. Near Tenth and Clay.

Q. So the entrance of the hotel was between you and the Cadillac automobile, is that correct?

A. Yes.

Q. And you could see the rear of the automobile, is that correct? A. Yes, sir.

Q. And it was parked on the same side of the street that you were standing?

A. On the same side, that is correct.

Q. By the way, were there any automobiles parked in between the Cadillac and the entrance to the Clay-Ten Hotel? A. I don't believe so.

Q. Now, then, it was your further testimony that you saw two of the defendants; I believe you have testified, the defendants Ingoglia and Ballard, leave the automobile. A. Yes, sir.

Q. And enter the hotel? A. Yes. [158]

Q. Did you remain standing and watching the entrance to the hotel? A. No, sir.

Q. What did you do then?

A. I walked up toward the entrance to the hotel and I met Agent Burtin,—

(Testimony of William H. Grady.)

Q. I see.

A. —he was walking down and I called his attention to Ingoglia at that time.

Q. The defendant Ingoglia had already entered the hotel, had he not?

A. No, he was walking down towards the hotel.

Q. Now, Agent Burtin, he was down near the intersection of Eleventh and Clay, right?

A. He was walking towards me, towards Tenth.

Q. When the automobile drove up?

A. When the automobile drove up.

Q. All right. Now, after the defendants Ballard and Ingoglia entered the entrance of the hotel, where were you standing?

A. We had walked—after I had spoken to Agent Burtin and we had walked back—we walked back to Tenth—close to Tenth Street on Clay Street.

Q. In other words, you were near the entrance of the hotel?

A. We were back there where I had originally pointed out.

Q. In other words, you were approximately two or three doors [159] from the entrance of the hotel?

A. The car parked here; Agent Burtin was walking down this way; I walked up this way, I met Agent Burtin right along in here, somewhere along in here, and as I met him I spoke to him and we turned and walked back down here (indicating on photograph).

Q. And as you were walking back down there,

(Testimony of William H. Grady.)

you were walking away from the Cadillac automobile, is that correct? A. Yes, sir.

Q. You testified that you saw a police car drive up, is that correct? A. Yes, sir.

Q. Where were you standing at the time the police car drove up?

A. At the time the police car drove up, I was across the street, I had walked out of that neighborhood and walked over to where the car was parked, the government automobile was parked.

Q. You walked to where the government car was parked? A. Yes.

Q. In other words, you left the entrance of the hotel, is that correct?

A. Well, I hadn't been in the hotel up to this time.

Q. Well, you were near the entrance of the hotel? A. Yes.

Q. And you walked on the other side of the hotel?

A. No, I walked past the hotel, walked up to the corner that is shown in the picture there (indicating on photograph). [160]

Q. This corner here?

A. Then I crossed the street and over to the automobile.

Q. You had walked past the Cadillac at that time? A. Yes.

Q. Was there anyone in the Cadillac when you walked by it? A. Yes.

(Testimony of William H. Grady.)

Q. Who? A. McDonough.

Q. Approximately how far were you from the entrance of the hotel at this time?

A. At the time I walked by?

Q. When you stopped in your government car.

A. Approximately 500 feet, five or six hundred feet.

Q. It was Sunday afternoon, was it not?

A. Yes.

Q. What time of the day or night?

A. Oh, possibly 4:00 o'clock.

Q. Did you hear any unusual sounds or noises?

A. Yes, sir, we heard a sound; we thought it was a backfire of an automobile.

Q. You didn't suspect that to be anything else but a backfire, did you?

A. It didn't sound like anything else to me.

Q. Now, you testified that when the second police car came up you saw the defendant McDonough leave the automobile? [161] A. Yes, sir.

Q. I believe it was your testimony further you saw him go around the corner of Clay Street onto Eleventh Street? A. Yes, sir.

Q. And look back several times?

A. Yes, sir.

Q. Around the corner?

A. Yes, sir, that is correct.

Q. I believe further it was your testimony that you walked back to the entrance of the hotelway, is that correct?

(Testimony of William H. Grady.)

A. No, sir. No—what I did, I was up in the government automobile——

Q. Yes, I know you were.

A. ——then we drove the automobile down, after we received a signal from Agent Burtin we drove the automobile down Clay Street. Agent Cass doubleparked the automobile on Clay Street and I got out and walked across the street to the hotel.

Q. You entered the hotel? A. Yes.

Q. You drove up in the elevator?

A. Went up in the elevator.

Q. How many elevators does the hotel have, Mr. Grady? A. I only saw one.

Q. Did you enter—did you get off on the third floor? A. Yes, sir. [162]

Q. Did you enter this room 306?

A. 306, yes, sir.

Q. And searching your memory carefully, Mr. Grady, tell me what you saw when you entered the room 306?

A. When I entered Room 306, it is my best recollection that Ingoglia and Ballard were sitting on the floor with their back up against a dresser and two police officers were standing inside the door and Mr. Leeper was standing close to the door to the bathroom.

Q. He was standing up, Mr. Leeper?

A. The defendant Leeper at the time I entered the room, he was standing up.

Q. Did you see your District Supervisor White?

(Testimony of William H. Grady.)

A. Oh, yes.

Q. Where was he?

A. He was standing alongside of the bed, as I recall it. He moved around—I was in the room for approximately two minutes at that time.

Q. Did any of the police officers have guns in their hands? A. No.

Q. Did Col. White have a pistol in his hand?

A. No.

Q. Did he have anything in his hand?

A. No, sir, I don't believe so.

Q. How large is that hotel room, sir? [163]

A. Oh, I would say 12 by 14.

Q. Now, could you describe its furnishings to me? A. There is a bed——

Q. Is that a double bed or a single bed?

A. A double bed.

Q. All right, sir.

A. There is a dresser in the far corner from the street, the far side from Clay Street; there is a clothes closet on the righthand side as you enter the door; going from there along that wall is a door that enters into the bathroom. That is my recollection of the room.

Q. Were there any chairs in the room?

A. Yes.

Q. Any tables?

A. I can't say. It seems as though I recall of a chair. I can't say about tables. It didn't impress my mind, anyway.

(Testimony of William H. Grady.)

Q. When you entered the room, was there anything on the bed? A. Yes, sir.

Q. What?

A. This envelope—there was a bag containing some white envelopes.

Q. Now, it is your testimony you heard a backfire, is that correct?

A. It is my testimony that I heard a sound that I thought was a backfire.

Q. How long a period of time elapsed from the time you heard [164] that sound until the time you got up into that room?

A. Perhaps ten minutes.

Q. Now, did you notice any other paper sacks or bags in that room?

A. No, no, sir; yes, I believe there was a bag, I believe there was a bag of money, but Mr. White had that in his hand, if I remember correctly.

Q. Mr. White did have something in his hand when you entered the room?

A. You refreshed my memory on that, counsel.

(Recess.) [165]

The Court: You may proceed.

Q. (By Mr. Kernes): Mr. Grady, I believe it was your testimony on direct examination that a complaint was issued for the defendant McDonough? A. Yes, sir.

Q. Do you recall just when that complaint was issued? A. No, sir; no, sir.

Mr. Kernes: I believe that is all.

(Testimony of William H. Grady.)

Cross-Examination

By Mr. Dunning:

Q. Mr. Grady, after you arrived in Oakland and proceeded to the vicinity of the Clay-Ten Apartments, you observed the informer Malibee and Agent White enter the Clay-Ten Apartments, is that your testimony? A. The Clay-Ten Hotel.

Q. The Clay-Ten Hotel. A. Yes, sir.

Q. You made that observation?

A. Yes, sir.

Q. You then next observed the defendant Ballard come out of the Clay-Ten Hotel?

A. Yes, sir.

Q. As I understand it, some five minutes or more later you observed the informer Mallibee come out of the Clay-Ten Hotel?

A. It is very difficult, Mr. Dunning, to place the time, to state definitely whether it was three minutes, five minutes or [166] four minutes. The whole transaction took place in a matter of a half an hour.

Q. I am trying to get your best recollection, your approximation of the time. I understood you said somewhere between three to five minutes elapsed from the time Ballard came out to the time Malibee, your informer, came out of the hotel.

A. That is correct.

Q. You observed Ballard enter this Cadillac car that you referred to?

A. Yes, sir, that is correct.

(Testimony of William H. Grady.)

Q. He left the vicinity where that car was parked by the Clay-Ten Hotel and went elsewhere in it, is that correct? A. That is correct.

Q. After you made that observation, what, if anything, did you do?

A. After Mr. Ballard left in the Cadillac automobile?

Q. That is correct.

A. I remained in the same place that I had been on Clay Street, near the corner of Tenth Street.

Q. Near the corner of Tenth?

A. Of Tenth, on the same side of the street as the entrance to the hotel.

Q. So that neither yourself nor any other agents followed Ballard in the automobile referred to?

A. Agent Burtin nor myself did. [167]

Q. All three of you remained in your respective positions, is that correct?

A. I couldn't see Agent Cass—I didn't see Agent Cass from where I was at, but I don't believe that he did.

Q. You later made the observation that this same Cadillac automobile returned to the vicinity of the Clay-Ten Hotel, is that correct?

A. Yes, sir.

Q. What did you do between that time and the time when Ballard left in the Cadillac car? What were your movements during that period of time?

A. Well, I would say all in a matter of probably ten or fifteen feet; I was just waiting.

(Testimony of William H. Grady.)

Q. You just remained at your post?

A. Remained in that vicinity that I was in.

Q. What period of time was that? How long was Ballard gone?

A. Oh, approximately ten to fifteen minutes.

Q. Ten or fifteen minutes. Well, would you say it was more 15 than 10?

A. Well, I couldn't—I wouldn't want to say definitely that it was 10 minutes if it was 12, or I wouldn't want to say it was 15 if it was 14.

Q. Well, from what you say it may have been 20?

A. Yes, it was either 10 or 15. That is my best recollection, in between those. [168]

Q. You observed Ingoglia step out of the Cadillac car being driven by the defendant Ballard, is that correct?

A. The first time I saw Ingoglia on that day was after the automobile had pulled into Clay Street, and I noticed that it was observing me very closely.

Q. That is your conclusion, is it not? That is your own conclusion?

A. His eyes were on me. He was approximately 20 feet from me.

Q. About 20 feet?

A. Approximately 20 feet from me at the time.

Q. There was nothing unusual about Mr. Ingoglia getting out of the car? A. No.

Q. He merely stepped out of the Cadillac car, isn't that correct? A. Yes, sir.

(Testimony of William H. Grady.)

Q. You observed no package in his hand or upon his person, did you? A. No, sir.

Q. And you say you were ten or fifteen feet—

A. Approximately 20 feet from him while he was in the car, while he was driving, his car was moving along the street. The first time that I had seen Mr. Ingoglia on that day was when he was approximately 20 feet from me.

Q. As he was getting out of the car?

A. No, as he was riding in the automobile, and the automobile [169] passed where I was standing.

Q. I see. He was in the car as he passed you and then the car proceeded to some other position.

A. Yes, sir, the car proceeded down the street.

Q. How far were you from the car when it finally parked? A. Well, I would say 150 feet.

Q. About 150 feet? A. Yes, sir.

Q. Mr. Ingoglia stepped out of the car as did Mr. Ballard, is that correct? A. Yes, sir.

Q. There was nothing unusual in his movements on that occasion, was there? A. No, sir.

Q. You saw no narcotics upon his possession, nor any object, did you? A. No, sir.

Q. So at that particular point of time you had no reason to believe that Mr. Ingoglia had in his possession the package that has been referred to or identified to by the Government?

Mr. Karesh: We object to that, your Honor.

The Court: Yes, sustained.

(Testimony of William H. Grady.)

Q. (By Mr. Dunning): You observed, then, the defendant Ballard and Ingoglia enter the Clay-Ten Hotel, is that correct? A. Yes, sir. [170]

Q. And the other agents were in the vicinity and outside of the Clay-Ten Hotel at that particular time? A. Yes, sir.

Q. Did any of the agents or yourself follow either Ingoglia or Ballard inside of the hotel?

A. No, sir.

Q. You did not? A. No, sir.

Q. By the way, what happened to your informer, Mallibee, after he left the Clay-Ten Hotel? Didn't you or any of the other agents follow him?

A. Another agent followed him.

Q. How long did you remain outside of the Clay-Ten Hotel after Ballard and Ingoglia entered the hotel?

A. I would say—you mean down on the corner of Clay Street at Tenth?

Q. That is where I understand you were, Clay and Tenth.

A. Yes, but I moved then—I remained in that position for approximately five minutes and then went on up the street to the government automobile.

Q. That was between Eleventh and Twelfth?

A. Between Eleventh and Twelfth.

Q. So you walked the entire block from Tenth to where the car was between Eleventh and Twelfth?

A. Yes, sir. [171]

Q. Now, some period of time expired there. How

(Testimony of William H. Grady.)

long did you remain outside and what was that time?

A. From the time—what you want, Mr. Dunning, as I understand it, is the time from the time Mr. Ingoglia and Mr. Ballard entered the hotel until the time that I entered the hotel?

Q. That is correct.

A. I would judge ten minutes, twelve minutes.

Q. Ten or twelve minutes? A. Yes, sir.

Q. How long before you entered the hotel did you see police cars?

A. That was a matter of four or five minutes—three minutes.

Mr. Dunning: I have no further questions.

Q. (By Mr. Karesh): Mr. Grady, did you see how——

The Court: Just a minute. Do any of the other defense counsel wish to ask any questions?

Mr. Ehrlich: No questions.

Mr. Deasy: No questions, your Honor.

Redirect Examination

By Mr. Karesh:

Q. Mr. Grady, did you see how Mr. Ingoglia was dressed when he got out of the car and went into the hotel? A. Yes, sir.

Q. How was he dressed?

A. Mr. Ingoglia wore a gray hat and a chamois leather coat, a sport coat, a long coat that came about half way between his pockets and his knees.

Q. Would you call it a full coat?

(Testimony of William H. Grady.)

A. Full coat—well, full coat—nearly a three-quarter-length coat.

Q. By “full” I mean was it a tightly-fitting coat or a loose coat?

A. It was a loose coat, and it was belted in the middle.

Recross-Examination

By Mr. Dunning:

Q. With a belt in the middle, did you say?

A. Yes, with a full belt that was tied in front.

Q. Mr. Grady, you testified concerning certain prints, one in particular taken from the Government’s Exhibit 31 For Identification. How many specimens in all did you take, fingerprints?

A. I developed, attempted to develop fingerprints on all twelve of the envelopes.

Q. How about the paper bag that is referred to here, first U. S. Exhibit No. 18.

A. That was also treated.

Q. This was also treated for fingerprints?

A. Yes, sir. You can see the smudges of the fingerprints on there.

Q. Did you develop your specimens from this bag? A. No, they were not legible.

Q. There were not any fingerprints taken from this bag?

A. The fingerprints that were on that bag are not legible enough to determine any points of comparison so that they could [173] be compared to some person or suspect.

(Testimony of William H. Grady.)

Q. So that no fingerprints were taken from this bag, U. S. Exhibit No. 18, is that your testimony?

A. Yes, that is my testimony.

Q. How about the envelopes?

A. Well, on the envelopes there are several fingerprints. There is quite a number of fingerprints on the envelopes, but they are smudged enough to where they are not legible. We cannot determine who they belong to. We have one we have identified, and we have several unidentified fingerprints, as I understand it.

Q. You have several unidentified?

A. Yes, sir.

Q. What do you mean by that?

A. Fingerprints that can be read and are legible, but we just don't know who they belong to.

Q. You don't know who they belong to. How many of those do you have?

A. I can't say definitely. I think Mr. Green would probably be able to tell you more definitely.

Q. You took those specimens from the envelope, did you not?

A. I developed the prints, developed the latent fingerprints that are on the package, by the use of silver nitrate solution, and after the fingerprints have been developed, any prints that contained enough pattern to be classified are compared and have had [174] photographs taken of those.

Q. How many were developed sufficient enough to be compared?

A. I would estimate that there are four or five.

(Testimony of William H. Grady.)

Q. Four or five. Well, were those processed through the Bureau of Identification in Washington? A. In New York.

Q. In New York? A. Yes.

Q. And you have been unable to identify them?

A. Well, I believe that there are three or four or five that have not been identified definitely, but Mr. Green has handled that and he can tell you about those.

Q. At all events, there are fingerprints of some persons other than these defendants?

A. That is my understanding.

Mr. Dunning: That is all.

Further Redirect Examination

By Mr. Karesh:

Q. Not all of the fingerprints, though, are other than these defendants? A. No.

Q. You say there were smudges on this brown paper sack, and therefore you could not, from the brown smudges, draw a latent fingerprint so that it could be compared with an exemplar; that is what you mean?

A. Exactly. There are fingerprints on there to show that it had [175] been handled, but the fingerprints are not of a quality that they can be read to determine who they belong to. They have been smudged.

Mr. Karesh: That is all.

Mr. Dunning: No further questions.

The Court: That will be all.

EDWARD P. BERTIN

called as a witness on behalf of the Government, and being duly sworn testified as follows:

Direct Examination

By Mr. Karesh:

Q. Mr. Bertin, you are an agent of the Bureau of Narcotics? A. Yes, I am.

Q. You work for the United States Government, is that correct? A. Yes, sir.

Q. You are assigned to the San Francisco office?

A. Yes, sir.

Q. You work under Colonel White?

A. I do.

Q. You work with Agents Cass, Grady, and other agents? A. I do.

Q. How long have you been an agent?

A. Seventeen years.

Q. How long have you been in San Francisco?

A. About eight years.

Q. Were you an agent in October and November of last year? A. Yes, sir.

Q. Calling your attention to October 31, 1948, did you see this Cadillac car with license No. 17-K-120, which is U. S. Exhibit No. 34 For Identification? A. I did.

Q. Where was the car the first time that you saw it?

A. It was parked on Clay Street, right off of Tenth, on the east side of the street facing north.

(Testimony of Edward P. Bertin.)

Q. When you first saw it was anyone in the car?

A. No, sir.

Q. Did you see then someone come in the car?

A. I did.

Q. Who did you see get in the car?

A. The defendant Ballard.

Q. By Ballard, whom do you mean, Mr. Bertin?

A. The man second from Mr. Leeper there.

Mr. Karesh: May the record show the witness has identified the defendant Ballard?

Q. Did Ballard drive away in the car?

A. He did, yes.

Q. Later on did you see this car with the license number 17-K-120 in the vicinity of the Clay-Ten Hotel?

A. Yes, I did. [177]

Q. Where was it?

A. It pulled up just a little beyond the entrance of the Clay-Ten Hotel north and parked.

Q. It came around the corner of Tenth, moved toward Eleventh and parked, is that right?

A. That is right.

Q. Whom did you see in the car?

A. I saw the defendant Ballard——

Q. You have already identified Ballard. Whom else did you see?

A. McDonough.

Q. Which is McDonough?

A. The man next to Ballard.

Mr. Karesh: May the record show the witness has identified the defendant McDonough.

Q. And who else?

(Testimony of Edward P. Bertin.)

A. The defendant Ingoglia sitting next to McDonough.

Mr. Karesh: Let the record show, if your Honor please, the witness has identified the defendant Ingoglia, who was driving the car.

Mr. Dunning: Who was driving the car?

Mr. Karesh: Yes.

Mr. Dunning: Pardon me. I do not believe that is the testimony.

Mr. Karesh: I asked him who was driving the car.

Mr. Deasy: Let the record show "the defendant Ingoglia, who was driving the car." [178]

Mr. Karesh: No, I stopped there. I said, "Who was driving the car?"

A. The defendant Ballard was driving the car.

Q. (By Mr. Karesh): Where was McDonough in the car?

A. He was sitting in the center of the front seat.

Q. Where was Ingoglia?

A. On the right side of the front seat, sitting on the right side.

Q. Who got out of the car?

A. Ingoglia and Ballard.

Q. Who remained in the car?

A. McDonough.

Q. Where did Ingoglia and Ballard go?

A. Went into the Clay-Ten Hotel.

Q. Did the defendant McDonough get into the driver's seat? A. Yes.

(Testimony of Edward P. Bertin.)

Q. How far away from them were you when this happened, when they got out of the car?

A. I was just walking by when the car was parked.

Q. By Eleventh and Clay Street?

A. Yes, going towards Tenth.

Q. Did you have a conversation with the defendant McDonough after October 31, 1948?

A. Yes, I did.

Q. Where did the conversation take place? When and who was [179] present when it took place?

A. On November 15th in the U. S. Marshal's office on the second floor of this building.

Mr. Karesh: If your Honor please, we ask——

The Court: Yes, this conversation will be received as simply and solely against the defendant McDonough. It is not evidence against any of the other defendants.

Q. (By Mr. Karesh): What was the conversation?

A. I was typing the information on the back of the fingerprint card of McDonough's.

Q. Yes.

A. And he made the remark he did not know why they got him into this.

Q. Go ahead.

A. That he didn't know any of these people we arrested except Ballard.

(Testimony of Edward P. Bertin.)

Q. He said he didn't know any of these people you had arrested except Ballard?

A. Ballard.

Mr. Karesh: That is all.

Cross-Examination

By Mr. Dunning:

Q. There was nothing unusual about Mr. Ingoglia getting out of the car, was there?

A. He got out of the car on the right side, the normal way.

Q. You saw no package or any other object upon his person? [180] A. No, I did not.

Q. How long a period of time would you say it was, Mr. Bertin, from the time Mr. Ballard came out of the car, came out of the Clay-Ten Hotel, until the time he returned?

A. Well, I would estimate around twenty minutes or so.

Q. Around twenty minutes or so? A. Yes.

Q. How long a period of time would you say expired from the time Ballard first came out of the Clay-Ten Hotel and was followed by the informer Mallabee?

A. I didn't see the informer follow.

Q. You did not? A. No.

Mr. Karesh: There is no such testimony. Do you mean followed in the sense of pursuit?

Mr. Dunning: I mean come out of the hotel.

The Witness: You mean followed out of the hotel?

(Testimony of Edward P. Bertin.)

Q. (By Mr. Dunning): Followed out of the hotel.

A. About five minutes or maybe a little more.

Cross-Examination

By Mr. Deasy:

Q. You say on the first occasion you saw the Cadillac there was no one in it, is that correct?

A. Yes, sir.

Q. And then you say a gentleman whose name is Ballard came out and got in the car? [181]

A. Yes, sir.

Q. You say his name was Ballard. At the time you saw him coming out of the hotel did you know his name was Ballard? A. No, I did not.

Q. That is the name you subsequently discovered belongs to him? A. That is right.

Q. When was the first occasion you had ever seen Mr. Ballard, as near as you can recall?

A. When he came out of the hotel and got in the Cadillac car.

Q. On October 31, 1948? A. Yes.

Q. And you have been actively in the Bay Area for eight years as a narcotic agent, is that correct?

A. Yes, sir.

Mr. Deasy: That is all. Thank you very much.

Q. (By Mr. Karesh): By the way, how was Mr. Ingoglia dressed?

The Court: Do any of the other counsel for the defendants wish to examine?

(Testimony of Edward P. Bertin.)

Mr. Kernes: No questions, your Honor.

Mr. Karesh: Pardon me, your Honor.

Redirect Examination

By Mr. Karesh:

Q. How was he dressed?

A. May I have that question again?

Q. How was Ingoglia dressed when he came out of the hotel and went into the car on October 31st?

A. He was wearing a chamois tan-colored sport coat with a belt and he had tan slacks and tan sport shirt.

Q. Did you see pictures of Ingoglia before that time?

A. No, I had not.

Mr. Dunning: I will object to that as incompetent.

The Court: The answer is in.

Mr. Karesh: That is all.

LOUIS VINCENT SOUZA

called as a witness on behalf of the Government, and being first duly sworn testified as follows:

Q. (By the Clerk): What is your full name?

A. Louis Vincent Souza.

Direct Examination

By Mr. Karesh:

Q. Mr. Souza, where do you reside?

A. 1135 Seventy-seventh Avenue, Oakland.

Q. How long have you resided there?

A. Since about 1943.

Q. Are you married?

A. I am.

(Testimony of Louis Vincent Souza.)

Q. You live with you wife? A. I do.

Q. At the address you just mentioned?

A. I do.

Q. Do you have any children? [183]

A. Not living with me at the home, no.

Q. What is your occupation?

A. Tavern owner.

Q. Where is the tavern?

A. 1218 Franklin, Oakland.

Q. You have a phone? A. I have.

Q. At your home? A. I have.

Q. What is the phone number?

A. Lochaven 9-5281.

Q. Did you have such a phone in your house in September, 1948?

A. Just about that time it went in.

Q. In October you had the phone in?

A. Yes.

Q. Did you have the phone in your house on October 20, 1948? A. I did. [184]

Q. And that is number Lockhaven 9-5281, is that right? A. Yes, sir.

Q. Do you know the defendant McDonough?

A. I do.

Q. Do you recognize him in the courtroom?

A. I do.

Q. Point him out to the Court, please, and jury.

A. The third one to the left.

Mr. Karesh: May the record show, if Your Honor please, that the witness has identified the defendant McDonough.

(Testimony of Louis Vincent Souza.)

Q. How long have you known him?

A. About eleven months.

Q. Calling your attention to September of 1948, did you have a conversation with him about a Cadillac automobile? A. Yes.

Q. Where did the conversation take place?

A. My bar.

Q. What was that? A. At my bar.

Q. Who was present when it took place?

A. Oh, I couldn't say.

Mr. Deasy: I am sorry, I didn't hear you.

A. I couldn't say.

Q. (By Mr. Karesh): Anyone else participating in the conversation about the car, or just yourself and Mr. McDonough? [185]

A. Oh, it was just talking about buying an automobile, I was going to buy a Cadillac.

Mr. Deasy: I don't believe that is responsive.

Q. (By Mr. Karesh): No. I asked you if anyone else was participating in the conversation besides yourself and McDonough, the conversation about the automobile. What is the answer?

A. No.

Q. Just tell us as best you remember it, what the conversation was, about the Cadillac car between yourself and McDonough.

Mr. Dunning: I will object to the question as being outside the presence of Ingoglia and hearsay.

Mr. Deasy: I urge the same objection.

The Court: I will receive it merely as against

(Testimony of Louis Vincent Souza.)

the defendant McDonough who had the conversation, with the understanding that later on the ruling may be expanded to include any defendants related in the conversation if connected up. Go ahead.

Q. (By Mr. Karesh): What was the conversation?

A. Well, it is pretty hard to say, because we were just talking about buying an automobile, a Cadillac, and he just mentioned Leeper had one for sale, and that was all the conversation was. I tried to contact Leeper and I couldn't get him.

Q. By Leeper who do you mean?

A. Right over there.

Q. The man sitting here, the man with the cane?

A. That is the only conversation I had. I didn't even get to [186] talk to him.

Q. Do I understand you had a conversation in September with Mr. McDonough about a Cadillac automobile and he said Leeper had a Cadillac automobile, is that correct, and you tried to get in touch with Leeper?

A. Yes, sir.

Q. Where did you call Leeper from?

A. My bar.

Q. Did you ever have any phone conversation with Mr. Leeper?

A. I did not.

Q. On October 20, 1948 did you have a phone conversation with Mr. Leeper over your home phone?

A. I never did.

Q. Now, tell me, did Mr. McDonough ever visit

(Testimony of Louis Vincent Souza.)

and stay in your home in October 1948?

A. Yes, he used to visit there.

Q. He used to visit there, or did he sleep there on many occasions?

A. He stayed there, but he wasn't living there.

Q. What do you mean by "he stayed there, but he wasn't living there"?

A. Well, a girl friend was living at the house.

Q. In other word, you say he stayed there, he slept there many times, did he not, in October?

A. Yes. [187]

Q. And he had the use of the phone, did he not?

A. Yes, the phone was there in the house. Anybody could use it.

Mr. Karesh: That is all.

Mr. Deasy: No questions for Ballard and Leeper.

Mr. Dunning: No questions as far as Ingoglia is concerned.

Mr. Ehrlich: No questions.

Mr. Kernes: No questions.

Q. (By Mr. Karesh): Could I ask you just one more question: The agents came down to see you about the defendant McDonough, did they not, some time after October 31?

A. Well, I don't know what date it was, they just came in like a bunch of Comanche Indians and arrested me, if that is what you want to know.

Q. They arrested you?

A. They didn't do nothing else.

Q. They took you to jail?

(Testimony of Louis Vincent Souza.)

A. No, they didn't take me to jail, they took me to my house and searched my house.

Q. They were looking for whom?

A. I don't know who they were looking for.

Q. Did they ask you about McDonough and where he was?

A. Yes, they asked me about McDonough.

Q. And they went out there to your house to see if he was there? A. No.

Q. What did they go there for? [188]

A. They just said they wanted to go to the house.

Mr. Deasy: Just a moment. Objected to as calling for an opinion and conclusion.

The Court: Sustained.

Q. (By Mr. Karesh): Anyway, they looked in your house, is that correct? A. Yes.

Q. And Mr. McDonough wasn't there?

A. No. He hadn't been there for three or four days.

Q. When did you see McDonough again after the officers came out to your house?

A. It was after he was released on bail.

Q. Did you have a conversation with him?

A. I did.

Q. You got into an argument, did you?

Mr. Deasy: Just a second. Objected to on the ground that is calling for a conclusion.

The Court: Sustained.

Q. (By Mr. Karesh): You had a discussion with him. What was the discussion?

(Testimony of Louis Vincent Souza.)

Mr. Deasy: Just a moment. On behalf of Ballard and Leeper, I object as hearsay.

The Court: It is received only against the defendant McDonough.

Mr. Dunning: I will object to it as far as the defendant [189] Ingoglia is concerned on the ground it is calling for a conversation after the completion of the so-called conspiracy.

The Court: I am receiving this solely against the defendant McDonough.

Mr. Karesh: We are so offering it.

Q. Go ahead. What was it?

A. Well, I got very angry about the whole situation and I asked him to leave, him and the girl that was staying at my house after he got out on bail, so they packed their clothes and left.

Q. Didn't you discuss the trouble he was in?

A. What is it?

Q. Didn't you discuss the trouble he was in?

A. No, I asked him what was the beef about—in fact, I knew what it was about after the officers told me—so it got one word after another and he thought I put the finger on the girl, and that was it, and I didn't have nothing to do with it at all.

Q. You told him you didn't put the finger on her? A. I did.

Mr. Karesh: That is all.

Mr. Deasy: No questions for Leeper and Ballard.

Mr. Kernes: No questions on behalf of the defendant McDonough.

(Testimony of Louis Vincent Souza.)

Mr. Dunning: No questions on behalf of the defendant Ingoglia.

Mr. Ehrlich: No questions.

The Court: Apparently there are no questions on cross-examination. [190] You may leave.

Mr. Karesh: Mrs. Souza.

MRS. ELIZABETH SOUZA

called for the United States; sworn.

Direct Examination

By Mr. Karesh:

Q. Where do you reside, Mrs. Souza?

A. At 1135 77th Avenue.

Q. In what city? A. In Oakland.

Q. Your husband is? A. Louis Souza.

Q. He is the gentleman who just came in and out of the courtroom? A. Yes, he is.

Q. And do you have a phone at your house?

A. Yes.

Q. Do you know your phone number?

A. It is Lockhaven 9-5281.

Q. How long have you had that phone in your residence?

A. I couldn't say, I don't recall.

Q. It was there in September, September 1948?

A. Yes, I think so.

Q. October 1948? A. Yes.

Q. Calling your attention to October 1948, did

(Testimony of Mrs. Elizabeth Souza.)

you at any time [191] from Lockhaven 9 what is it, 5281? A. Yes.

Q. —have a phone conversation with a man named Raymond Leeper?

A. No, I never have.

Q. You never phoned him and he never phoned you and you never spoke to him on the phone?

A. No.

Q. I call your particular attention to October 20, 1948, you never had any conversation with him over the phone Lockhaven 9-5281 on that day?

A. No.

Q. He never called you? A. No, sir.

Q. Never spoke to you? A. No, sir.

Q. You know, of course, Mr. McDonough, do you not? A. I don't know the name.

Q. You knew him by the name of Red, didn't you? A. Yes.

Q. You know Red. Did Red stay at your house for a while?

A. Well, at times he stayed there.

Q. During October 1948?

A. Well, I think so, he was there at times.

Q. Spent the night there, did he not?

A. Yes. [192]

Q. He had the use of your phone, didn't he?

A. Well, yes.

Q. He used to receive calls there, didn't he?

A. Well, I don't really know, I don't remember. They all used the phone, everybody in the house used the phone.

(Testimony of Mrs. Elizabeth Souza.)

Q. Who was there in the house at that time?

A. My husband and I and one of my girl friends.

Q. ———who lived there, and McDonough?

A. Yes.

Q. That is all that were in the house?

A. Yes.

Mr. Karesh: That is all.

Mr. Kernes: No questions on behalf of the defendant McDonough.

Mr. Deasy: No questions on behalf of Ballard and Leeper.

Mr. Dunning: No questions.

Mr. Ehrlich: No questions.

The Court: That is all.

(Thereupon an adjournment was taken to 2:00 o'clock p.m.)

Afternoon Session

Wednesday, June 8, 1949, 2:00 o'Clock

Mr. Karesh: Call Mrs. LaFevar.

GENEVA LaFEVAR

called for the United States; sworn.

Q. (By the Clerk): What is your name, please?

A. Geneva LaFevar.

Direct Examination

By Mr. Karesh:

Q. What did you say your name was, please?

A. Geneva LaFevar.

(Testimony of Geneva LaFevar.)

Q. Are you Miss or Mrs.? A. Mrs.

Mr. Dunning: I didn't get that answer.

Mr. Deasy: Will you speak up louder?

Mr. Dunning: Will you read the last answer, Mr. Reporter?

(Record read.)

Q. (By Mr. Karesh): Are you living with your husband or divorced? A. Divorced.

Mr. Dunning: I didn't get that last answer. May I have that again?

The Court: Now, can't you speak up a little louder? Not even the Reporter can hear you. These gentlemen down here and everybody have to hear you.

Mr. Deasy: May I have that last answer read?

The Clerk: She said she was divorced. [194]

Q. (By Mr. Karesh): Did you live in Oakland in 1948? A. I did.

Q. And when did you first come to live in Oakland? A. In February 1948.

The Court: Can't you speak louder?

A. I am sorry.

Mr. Dunning: May I have the last answer read?

The Court: February 1948 was the answer.

Q. (By Mr. Karesh): And did you have a job in Oakland? A. Yes, I had one.

Q. And what job did you have?

A. Cashier at the Mayflower Restaurant and I worked at various restaurants.

Q. And where did you come from? Where is your home? A. Ohio.

(Testimony of Geneva LaFevar.)

Q. What city in Ohio? A. Akron.

Q. Now, do you know a man by the name of Ingoglia? A. I do.

Q. Do you know his full name?

A. Andrew Ingoglia.

Q. Do you know him by any other name?

A. Andy Bruno.

Q. What was that? I couldn't hear you.

A. Andy Bruno. [195]

Q. And how long have you known Mr. Ingoglia or Mr. Bruno? A. Since September 1948.

Q. (By the Court): September of what year?

A. September of 1948.

Q. (By Mr. Karesh): And how did you happen to meet Mr. Ingoglia?

A. Well, I was working in barbershop and I met him through a friend of mine, a manager.

Mr. Deasy: I am sorry, I didn't hear that. May I have that answer read?

The Court: She said she was working in a barbershop and she met him through a friend.

A. —that was working in the barbershop.

Q. (By Mr. Karesh): What barbershop was that? A. Harry Bank on Franklin Street.

Q. Is that in Oakland, Mrs. LaFevar?

A. Yes.

Q. Now, the man you say you met, Mr. Ingoglia, do you recognize him in the courtroom?

A. Yes.

Q. I couldn't hear you, I am sorry.

(Testimony of Geneva LaFevar.)

A. Yes.

Q. And will you point Ingoglia out to the Court and the members of the jury?

A. He is the fourth person sitting to my right.

Q. This gentleman here with his hand on his face? [196]

A. Yes.

Mr. Karesh: May the record show, Your Honor, that the witness has identified the defendant Andy Ingoglia also known as Andy Bruno.

Q. Did you start keeping company with Mr. Ingoglia after you met him in September 1948?

A. Yes.

Q. And where did you live at that time?

A. At the Travelers Hotel.

Q. And where is the Travelers Hotel?

A. In Oakland?

Q. And do you know where Mr. Ingoglia lived when you met him?

A. When I met him he was living at the St. Marks and then later he moved to the Lakeside Hotel.

Q. I didn't hear that.

A. When I met him he was living at the St. Marks Hotel——

Mr. Dunning: St. Marks?

A. ——and later he moved to the Lakeside Hotel.

Q. (By Mr. Karesh): Both those hotels in Oakland?

A. Yes.

Q. After September, after you met Mr. Ingoglia

(Testimony of Geneva LaFevar.)

in September of 1948, did you keep steady company with him? A. Yes.

Q. Did he visit you in your apartment?

A. Yes. [197]

Q. More than one occasion? A. Yes.

Q. Would you say often? A. No.

Q. How many times would you say you visited him a week?

A. I saw him practically every day.

Q. And did you stay late in his apartment?

A. Yes.

Q. Did he come and visit you in your apartment?

A. On various occasions.

Q. What is that? A. Various occasions.

Q. In other words, you visited each other in your respective places where both of you were staying, is that correct? A. Yes.

Q. Did you drive an automobile at that time?

A. Yes.

Q. Whose automobile was it that you were driving? A. Mr. Ingoglia's.

Q. Mr. who? A. Mr. Ingoglia's.

Q. Did you ever go out and purchase some milk sugar for anyone during 1948? A. Yes.

Q. Do you recall about when it was in 1948 that you purchased [198] some milk sugar?

A. The latter part of November or the first of December.

Q. Where did you purchase it?

Mr. Dunning: Just a moment. I didn't hear the answer, Your Honor.

(Testimony of Geneva LaFevar.)

The Court: The latter part of November or the first part of December.

Q. (By Mr. Karesh): Where did you purchase the milk sugar from?

A. A drugstore in Berkeley.

Mr. Dunning: Just a moment. I am going to object to that as calling for evidence that transpired after the completion of this crime, a date in November or December. The crime is alleged to have been committed on October 31, 1948.

The Court: I fail to see the materiality.

Mr. Karesh: I think, Your Honor, it has to do with the pattern or type of crime here. The chemist has specified that in the narcotics that he examined there was a reduced sugar, and milk sugar is a reduced sugar.

Mr. Dunning: I contend, Your Honor, it is remote and outside the issues of this case. It apparently concerns itself with a transaction that has nothing to do with the charge in the indictment.

The Court: It is too speculative. Sustained.

Q. (By Mr. Karesh): Did you have a conversation with Mr. Ingoglia about narcotics? [199]

Mr. Dunning: Just a moment. I will ask that the time and place be fixed.

The Court: Yes.

Mr. Karesh: I am about to fix it.

Q. Did you have a conversation with him?

A. Yes.

Q. About when did the conversation take place?

(Testimony of Geneva LaFevan.)

A. Well, about the same time, just a few days prior to the time that I bought the milk sugar.

Mr. Deasy: Could we have the latter part of the answer read? I didn't hear it.

The Court: "About the same time, a few days before I bought the milk sugar."

Mr. Deasy: Thank you.

Q. (By Mr. Karesh): Would you say that was in November of 1948? A. Yes.

Q. Can you fix that in relation to the time that Mr. Ingoglia was arrested on this narcotic charge?

Mr. Dunning: I will object to that as calling for a conclusion and opinion of the witness. The indictment specifies the date of the arrest——

The Court: Well, it assumes something not in evidence that she knew when he was arrested.

Q. (By Mr. Karesh): I will withdraw the question and ask you do you know when he was arrested? [200] A. Yes.

Q. Yes? A. Yes.

Q. Did he talk to you, Mr. Ingoglia, about his arrest? A. After his arrest, yes.

Q. How long after his arrest did he talk to you?

Mr. Dunning: Now, I am going to object to any conversation had after the arrest of this defendant.

The Court: Yes, any conversation, any testimony concerning a conversation this witness had with Ingoglia is received solely and exclusively as against the defendant Ingoglia and is not evidence against any of the other defendants in the case.

(Testimony of Geneva LaFevar.)

Mr. Dunning: I am objecting further, Your Honor, on the ground that it is calling for a conversation outside the issues of this case, remote and at a time when the——

The Court: I don't know what the conversation is about. It may bear directly on this case.

Mr. Dunning: However, the time has been fixed as of November or December, a time after the completion of the alleged conspiracy and the offense alleged in the indictment. Upon that ground I ask that the conversation go out.

Mr. Karesh: I thought she said——

The Court: Mr. Dunning, if there is an admission made by this defendant that she is going to relate, that certainly would be pertinent whether made after the consummation of the alleged [201] offenses. Proceed.

Q. (By Mr. Karesh): How long after the arrest would you say this conversation took place?

A. About two weeks.

Q. Where was it the conversation took place?

A. Mr. Ingoglia had contacted me approximately two weeks after he had been released from prison and that is when it took place.

Q. You mean he had been released on bail on this charge? That is what you mean, don't you?

A. Yes.

Q. Where were you and where was he when the conversation took place?

A. In various places.

(Testimony of Geneva LaFevar.)

Q. No, I mean one particular conversation in which he discussed his arrest with you. You say such a conversation took place. Where were the two of you when it took place?

A. Well, when we were driving around in the car and when I first met him it had been brought up.

Q. Now, you say when you first met him after his arrest you say the conversation was brought up about the arrest. You say you think you were driving in your automobile or in the automobile. Anyone else in the automobile, Mrs. LaFevar, when this took place? A. No. [202]

Q. All right. Now tell the jury as best you can remember, and the Court, just what was said.

A. Well,—

The Court: Speak up, please, so we can all hear you.

A. When he contacted me the first thing, naturally, was the case, was brought up, so I asked him a few questions and he told he, he says, well, he says, the law didn't catch him with anything, but he was going to beat the rap. That is all.

Q. (By Mr. Karesh): Now didn't he say something to you, Mrs. LaFevar, other than that? Wasn't there anything else said?

A. At that previous time I don't think so. I don't remember.

The Court: Speak up. What is it?

A. I can't remember right now; I can't recall right now.

(Testimony of Geneva LaFevar.)

Q. (By Mr. Karesh): Well, wasn't there some conversation about your——

Mr. Dunning: Just a moment. I am going to object to this as leading and suggestive and an apparent attempt on the part of the prosecutor to coach the witness.

Mr. Karesh: I am not coaching the witness.

Mr. Dunning: Objected to as leading and suggestive, Your Honor.

Q. (By Mr. Karesh): I asked you——

A. He has told me——

Q. Go ahead; what did you say?

A. He has told me that more than once. [203]

Q. (By the Court): He told you what?

Q. (By Mr. Karesh): Told you what?

A. That he was going to beat this case.

Q. (By the Court): Was there anything else he told you about this case?

A. Yes, he was also in the narcotic traffic.

Mr. Kernes: Would the Reporter repeat that last portion of the answer?

The Court: "Also he said he was in the narcotic traffic."

Q. (By Mr. Karesh): Did you ever ask him where the narcotics came from?

A. He has told me.

Q. What did he tell you?

A. They came from New York.

Mr. Dunning: Just a moment. I object. The time and place of the conversation——

(Testimony of Geneva LaFevar.)

Mr. Karesh: Yes, I am sorry.

The Court: Yes.

Q. (By Mr. Karesh): Where and when did the conversation take place about the narcotics coming from New York?

A. When he lived at the 55th Avenue Motel.

Q. About what time was that?

A. This was just a few weeks before Christmas.

Mr. Dunning: Pardon me, I didn't hear that.

The Court: "Just a few weeks before Christmas." [204]

Q. (By Mr. Karesh): What did he say about the narcotics from New York?

A. Well, he said someone's bringing some narcotics in from New York.

Mr. Dunning: Just a moment. I am going to ask this go out as incompetent, irrelevant and immaterial and not within the issues of this case.

The Court: Motion denied.

Mr. Deasy: Your Honor's ruling in connection with this testimony too is it is admissible only as to——

The Court: I so explained it to the jury. It is admissible solely against the one defendant Ingoglia.

Q. (By Mr. Karesh): Did you ever see Mr. Ingoglia at any time with any narcotics in his possession? A. Yes.

Mr. Dunning: Just a moment. I ask the time and place be fixed.

The Court: Yes.

(Testimony of Geneva LaFevar.)

Q. (By Mr. Karesh): You say your answer is yes. Will you fix the time and who was present?

A. The person who brought it in from New York, Mr. Ingoglia and myself.

Q. The who?

A. The person who brought it in from New York, Mr. Ingoglia and myself. [205]

Q. And what was said at that time?

The Court: First, do you know who the person was from New York?

The Witness: Yes, I do.

Q. (By Mr. Karesh): What was his name?

A. Tony Sapoli.

Q. Tony who?

A. I think it is pronounced Sapoli.

Q. Now, do you recall the date? Was that before Christmas? A. Yes.

Q. Was this before you were in the hospital?

A. Yes.

Mr. Dunning: Just a moment. That doesn't fix the time. May I have the time and place fixed for the conversation?

The Court: Can you place more definitely the date?

The Witness: I couldn't tell you the exact date. All I can say is it was the latter part of November or the first part of December.

Q. And where was the conversation had?

A. 55th Avenue Motel.

The Court: Proceed.

(Testimony of Geneva LaFevar.)

Q. (By Mr. Karesh): Who did you say was present?

A. Mr. Ingoglia, Tony Sapoli and myself.

Q. You saw the narcotics there?

A. I did.

Q. Did Mr. Ingoglia tell you they were narcotics? [206]

A. Yes.

Mr. Karesh: That is all.

Cross-Examination

By Mr. Dunning:

Q. You say, Mrs. LaFevar, that you are married but divorced, is that correct?

A. Yes.

Q. Where did you say you came from before coming to California?

A. I lived in New York.

Q. New York. And you arrived here some time in Oakland in September of 1948, is that correct?

A. No, I arrived here in February 1948.

Q. In February 1948. Who did you come from New York with?

A. I came by myself.

Q. You came by yourself. Did you reside at the St. Marks Hotel in Oakland?

A. Yes.

Q. With whom did you reside there?

A. By myself.

Q. By yourself?

A. Yes.

Q. You weren't registered at the St. Marks Hotel with any other persons?

A. No.

Q. Now, you say you met Mr. Ingoglia in September of 1948, is that correct? [207]

A. Yes.

(Testimony of Geneva LaFevar.)

Q. Did I understand your testimony you met him in a barber shop in Oakland? A. Yes.

Q. Were you working there at the time?

A. Not that particular barber shop, but I was working in a barber shop, yes.

Q. I didn't quite understand you.

A. I wasn't working in the particular barber shop that I met him in, but I was working in a barber shop.

Q. I see. What barber shop were you working in? A. On 15th Street.

Q. On 15th Street in Oakland. And how long had you been employed in that barber shop?

A. Not long, because I had just received my manicuring license.

Q. You are a manicurist, are you?

A. Yes.

Q. When did you first go to work in that barber shop?

A. Just a few weeks before I met Mr. Ingoglia.

Q. That would be in September of 1948, is that correct? A. Yes.

Q. And what did you do, what was your employment from February 1948 up until the time you went to work in the barber shop?

A. I had not worked.

Q. You had not worked? [208] A. No.

Q. You had no other means of income during that period of time?

A. I worked before I came here and saved my money.

(Testimony of Geneva LaFevar.)

Q. You had saved a sufficient amount of money to sustain you during that period of time?

A. That is correct.

Q. That is correct. You lived alone at the St. Marks Hotel? A. Yes.

Q. Now, after you left Mr. Ingoglia you say you moved to the Travelers Hotel? A. Yes.

Q. Is that correct? A. Yes.

Q. And how long had you known Mr. Ingoglia before you moved from the St. Marks Hotel to the Travelers Hotel?

A. Approximately two weeks.

Q. Approximately two weeks?

A. Two or three weeks, yes.

Q. Two or three weeks. After knowing Mr. Ingoglia for approximately two or three weeks, you then moved to the Travelers Hotel, is that correct?

A. Yes.

Q. And who did you reside there with?

A. Myself.

Q. Did you ever register there with anyone else?

A. No, sir.

Q. You did not? A. No.

Q. What room did you reside in at the Travelers Hotel? A. I can't remember right now.

Q. You don't recall. Was Mr. Ingoglia registered there at the hotel at that time? A. Yes.

Q. He was. And do you know what room Mr. Ingoglia was registered in? A. No.

Q. You don't know. You testified that you kept steady company with Mr. Ingoglia?

(Testimony of Geneva LaFevar.)

A. For a long period of time off and on from the time I met him until I entered the hospital.

Q. Until the time you entered the hospital. Well, that would be over how many weeks or months?

A. That would be from September——

Q. Do you recall when you went in the hospital?

A. ——until January.

Q. Until January of this year, 1949, is that correct? A. Yes.

Q. Where were you residing at the Travelers Hotel in Oakland? You testified that Mr. Ingoglia visited your room and you exchanged visits to his, is that your testimony? [210]

A. The only time at the Travelers was only a matter of a few days.

Q. He was only——

A. The time we lived at the Travelers Hotel was only a matter of a few days.

Q. I see. How long did you live there?

A. I don't remember.

Q. Can you recall the approximate number of days? A. No, I can't.

Q. Was that more than week or less than a week? A. I really can't recall.

Q. You don't know, is that your answer?

A. Yes.

Q. Where did you move to after you left the Travelers Hotel? A. To Emeryville.

Q. You reside there alone or with someone else?

A. Alone.

(Testimony of Geneva LaFevar.)

Q. Were you working all this period of time?

A. Yes.

Q. Now, you and Mr. Ingoglia, I take it, had somewhat of a love affair together; is that correct?

A. Love affair?

Q. Yes. A. I wouldn't say that.

Q. Pardon? [211] A. No.

Q. You had no affair at all with Mr. Ingoglia?

A. We were together, yes.

Q. Were you intimate together?

A. We never loved each other.

Q. You never lived together? You were intimate together, were you not?

A. I don't see where that has anything to do with this case at all.

The Court: You answer it.

The Witness: I am sorry.

Q. (By Mr. Dunning): Your answer is no, is that your answer? A. No.

The Court: What is your answer? You were asked if you were intimate with him.

The Witness: Yes.

Q. (By Mr. Dunning): Now, the first time it ever came to your attention that Mr. Ingoglia was involved in any sort of an affair involving narcotics is when you read it in the newspapers, is that correct? A. Yes.

Q. That was on October—November 1st or 2nd of 1948? A. I don't recall the dates.

Q. You don't recall the date? A. No. [212]

(Testimony of Geneva LaFevar.)

Q. Now you and Mr. Ingoglia on or about that time or some time in the early part of November no longer continued your close friendship together, did you? I mean, you didn't see each other very often? A. Would you repeat that, please?

Q. I say, after the beginning or first of November you and Mr. Ingoglia had not seen each other very often. A. You mean before his arrest?

Q. Well, when did you stop seeing Mr. Ingoglia?

A. When he was arrested.

Q. When he was arrested? A. Yes.

Q. Well, after he was arrested, then, I understand, you never saw him any more, is that correct?

A. Two weeks after he was released I saw him.

Q. You saw him two weeks after he was arrested? A. Yes.

Q. And up until that time neither you nor Mr. Ingoglia ever had any conversations involving this particular case, had you? A. No.

Q. Mr. Ingoglia has never discussed this particular case with you, has he?

A. Yes, he has.

Q. As I understand it from your testimony, he said that while he was arrested that they had nothing on him and that he did not [213] expect to be convicted?

A. That is what he said first, yes.

Q. That is what he said. In other words, he indicated to you that he wasn't guilty of the offense he was charged with, isn't that correct?

A. At first, yes.

(Testimony of Geneva LaFevan.)

Q. Yes. And that was the entire extent of his conversation with you insofar as this case is concerned. Isn't that all that Mr. Ingoglia has ever said to you when you asked him anything about this case? A. No.

Q. He did not? A. No.

Q. You and Mr. Ingoglia had some personal feeling over your acquaintanceship, did you not?

A. I don't know what you mean.

The Court: Well, did you have any difficulty with him? Have you any feeling of ill will toward him?

The Witness: No.

Q. (By Mr. Dunning): Well, you called him up on New Year's Eve of 1948 and asked to see him, didn't you? A. No.

Q. And didn't Mr. Ingoglia tell you he didn't want to be serious with you any more?

A. No. [214]

Q. Isn't that correct? A. No.

Q. Didn't you make overtures on several occasions that you wanted to continue your company and your relationship with Mr. Ingoglia and he told you that he didn't desire to continue it any further?

A. No, sir.

Q. He did not?

A. No, sir. That is not true.

Mr. Karesh: What was that last answer?

The Court: She said, "That is not true."

The Witness: It is not true.

(Testimony of Geneva LaFevar.)

Q. (By Mr. Dunning): Now, he never at any time told you that he delivered a package that is involved in this case to Mr. Ray Leeper, did he?

A. From the time that I saw him, he was supposed to have left town, before he was arrested he was supposed to have left town.

Mr. Dunning: Just a moment. I ask that go out as not responsive.

The Court: It will go out. You were asked about the conversation that you had with him about that.

The Witness: That is what I was leading to.

The Court: Well, did you have a conversation with him about the delivery of a package?

The Witness: Yes. [215]

Q. —to Mr. Leeper. When and where did you have that conversation?

A. This was while he was living in the 55th Street Motel.

Q. Can you fix that approximately?

A. You mean the date.

Q. Yes, the month.

A. It would have to be in November.

Q. In November. And who were present?

A. Just myself.

Q. With him? A. Yes.

Q. What did he say?

A. Oh, he was explaining how Mr. White walked into the room and the three of them—two of them were in there, and I can't recall just exactly how it happened, but he did explain it to me.

(Testimony of Geneva LaFevar.)

Q. Can't you go into detail and tell us more fully what you recall of what he said at that time?

A. No, but it was brought up, but I can't—

Q. Did he say anything about a package being delivered to the room? A. Yes.

Q. Tell us what he said about that.

A. Well, I told you I don't have it fixed in my mind because I really didn't pay too much attention.

Q. Well, your best recollection of what he said about the [216] package.

A. Well, he just explained how the agents caught them with the narcotics.

Q. How the agents caught who? Who do you mean? A. Caught them.

Q. Caught them? A. Yes.

Q. And did he explain to you how the agents caught them?

A. It was brought up, but I really don't remember just exactly how—right now I can't recall just exactly.

Q. Did he tell you who had gone to the Leeper apartment?

A. From my recollection, he was there also.

Q. Who? A. Mr. Ingoglia.

Q. Anybody besides Mr. Ingoglia?

A. No, I don't know.

Q. Did he tell you who brought the package to the room? A. No.

Q. Didn't he say anything about the package? (Testimony of Geneva LaFevar.)

A. He said, but I don't remember, I really don't remember just exactly, there are so many things I just can't recall everything, but I do recall that it was discussed.

Q. (By Mr. Dunning): Well, as a matter of fact, Mrs. LaFevar, you read in the newspapers that Mr. Ingoglia was accused of delivering a package in this case, isn't that correct? [217]

A. Yes.

Q. Now, when was it that this party you refer to as Mr. Sapoli or Saboli, whatever his name is, when was he here in Oakland?

A. The first time? Well, he was about—I would say about three weeks before Christmas.

Q. Three weeks before Christmas?

A. I would say about three weeks. I wouldn't know exactly.

Q. Three weeks before Christmas, that would be some time in the early part of December or the latter part of November, is that correct? Is that correct? A. Yes.

Q. So that that individual whom you refer to as Sapoli did not—was not mentioned or known by you until some time after October 31?

A. That is right.

Q. That is correct. Now, when you say you kept steady company with Mr. Ingoglia, what do you mean by that? A. I was with him every day.

Q. You were with him every day? You mean by that that you lived with him also?

(Testimony of Geneva LaFevar.)

A. No, I don't.

Q. Pardon? A. No, I don't.

Q. You don't mean that? A. No, I don't.

Q. You mean to say that you didn't live with Mr. Ingoglia? A. No, I didn't.

Q. Did you live with anyone else at the St. Marks Hotel when you came to New York?

Mr. Karesh: I object to that as incompetent, irrelevant and immaterial as to whether she lived with anyone else.

The Court: Sustained.

Q. (By Mr. Dunning): Now, you referred to a conversation in Mr. Ingoglia's automobile. Do you recall just testifying to that? A. Yes.

Q. You do. Now, you said that you think that it was in the automobile. Do I understand you again that you are not sure or certain that a conversation took place in the automobile?

A. The conversation took place when I met him that day. Whether we were in the automobile or otherwise, it took place.

Q. What day was that?

A. It was two weeks, approximately two weeks after his arrest.

Q. Two weeks after he was arrested?

A. I mean, after he was released.

Q. After he was released, is that correct?

A. Yes.

Q. But you couldn't say for certain whether it was in the automobile or some other place, is that correct?

(Testimony of Geneva LaFevar.)

A. No, but I am certain it was in the automobile. [219]

Q. And the most Mr. Ingoglia told you at that time, that he was arrested but that they didn't get anything on him and he expected to be acquitted. Didn't the conversation amount to that?

A. He also said they were fully of boloney.

Q. Were those his exact words? A. Yes.

The Court: You said in your direct examination he made the statement that he would beat the rap. Now, did he say that or not?

The Witness: He did.

Q. (By Mr. Dunning): When did you first speak to the agents in charge of this case, Mrs. LaFevar? A. February of 1949.

Q. February of 1949, is that correct?

A. Yes. It could have been January.

Q. January 1949?

A. The latter part of January or the first part of February, I don't know.

Q. And you made no effort at any time before then to contact any of the agents or speak to them, did you, about this case? A. Yes, I did.

Q. About this case or about some other matter?

A. About Mr. Ingoglia himself.

The Court: About what? [220]

The Witness: About Mr. Ingoglia.

Q. (By Mr. Dunning): That was in 1949. Who did you speak to then?

A. That was in 1948 I wrote a letter.

(Testimony of Geneva LaFevan.)

Q. Pardon? A. In 1948 I wrote a letter.

Q. You wrote a letter? A. Yes.

Q. Now, isn't it a fact that for some time after January 1949 that you tried to contact Mr. Ingoglia and he told you he didn't care to continue his company with you any further?

A. No, that is not true.

Q. He did not.

Mr. Dunning: I have no further questions.

Mr. Deasy: I have no questions.

Mr. Kernes: No questions, Your Honor.

Redirect Examination

By Mr. Karesh:

Q. In response to a question by counsel, you said you wrote a letter, is that correct?

A. Yes.

Q. About Mr. Ingoglia? A. Yes.

Q. Did you call him Ingoglia in that letter or Bruno? A. I think it was Bruno.

Q. Do you recall when you wrote the letter?

A. Yes, it was before Christmas.

Q. Could it have been after Christmas?

A. Yes, it could have been.

Q. Did you sign your name to that letter?

A. No.

(Mr. Karesh exhibited the letter to counsel.)

Q. This is the letter you wrote to the FBI?

Mr. Dunning: I am going to object to the letter, Your Honor, as incompetent, irrelevant and

(Testimony of Geneva LaFevar.)

immaterial, and on the further ground it concerns itself with matters that are not pertinent to the issues in this case.

The Court: The objection is sustained.

Mr. Karesh: Is the objection sustained to any questions about the letter or of the admissibility?

The Court: The admissibility.

Q. (By Mr. Karesh): Why did you write the letter?

Mr. Dunning: Objected to on the same ground.

The Court: Sustained.

Mr. Karesh: There was some question raised by counsel, Your Honor——

The Court: It is immaterial, Mr. Karesh, I have ruled.

Q. (By Mr. Karesh): Did you complain—did you talk to the narcotics authorities because Mr. Ingoglia or Mr. Bruno had broken up with you, no longer in love with you, or something like that?

A. No.

Q. What is that? A. No.

Q. You tried to kill yourself in the hospital and went to the hospital, didn't you? A. Yes.

Q. The answer is yes. That was after this arrest of Mr. Ingoglia? That is right, isn't it?

A. Yes.

Recross-Examination

By Mr. Dunning:

Q. Now, Mrs. LaFevar, what was the reason for you attempting to take your life?

(Testimony of Geneva LaFevar.)

A. I was messed up in a lot of things that I didn't care to be.

Q. Now, was it because you and Mr. Ingoglia had separated your friendship? Was that the reason? A. He was with me at that time.

Q. How were you registered at the St. Marks Hotel? A. As Miss LaFevar.

Q. How did you register at the Travelers Hotel?

A. Mrs. Bruno.

Q. How was Mr. Ingoglia registered?

A. As Mr. Bruno.

Mr. Dunning: I believe that is all.

Mr. Karesh: That is all.

Mr. Kernes: No questions. [223]

Mr. Deasy: No questions.

The Court: That will be all.

Mr. Karesh: Mr. McGuire.

THOMAS E. McGUIRE

called for the United States; sworn.

Direct Examination

By Mr. Karesh:

Q. Mr. McGuire, you are a special agent of the Bureau of Narcotics? A. Yes, sir, I am.

Q. And you are assigned to the San Francisco office? A. I am.

Q. And Col. White who sits behind me is your District Supervisor, is that correct?

A. That is correct.

Q. You work under his direction?

A. That is true.

(Testimony of Thomas E. McGuire.)

Q. Do you know James Ballard who sits in the courtroom here? A. Yes, sir, I do.

Q. Will you point him out to the members of the jury and the Court, please?

A. Yes, sir, he is sitting next to Mr. Leeper, the second man inside.

Mr. Karesh: May the record show, Your Honor, that the witness has identified the defendant Ballard. [224]

Q. Did you see the defendant Ballard in the Post Office Building, this building, in November of 1948? A. Yes, sir, I did.

Q. Did you see him in the office of the United States Attorney?

A. He was taken over in the custody of the United States Marshal, Deputy Marshal.

Q. And do you know to what room he came?

A. He came to your office.

Q. Do you know the number? It is 437 in this building.

A. I know it is within the suite of the District Attorney's office. I have been in it a great number of times, but it is in your office.

Q. My name is on it?

A. Your name is on it, yes.

Q. One of the names of many of the Assistants—lots of the Assistants have names on their doors. Do you remember the conversation that took place in that room—what day was it?

(Testimony of Thomas E. McGuire.)

A. It was on a Wednesday, November the 3rd of 1948.

Q. All right. Tell us the conversation that took place.

Mr. Dunning: Just a moment, Mr. McGuire, before you answer that question. I am going to object to any conversation between Mr. Ballard and Mr. McGuire outside of the presence of the defendant Ingoglia as hearsay and not binding.

The Court: The testimony of this witness may give us any conversation which he had with the defendant Ballard or any [225] conversation he had overheard in which Mr. Ballard engaged, will be received solely against the defendant Ballard and is not received against any of the other defendants in the case.

Mr. Deasy: Will you ask who was present, Mr. Karesh?

Q. (By Mr. Karesh): Who was present?

A. Mr. Karesh, the Assistant District Attorney, the defendant Ballard, and to the best of my knowledge and recollection, I believe Mr. Eagan, the United States Deputy Marshal, was in and out of the room. Whether he remained throughout the conversation I can't say.

Q. Well, now, relate the conversation.

A. The defendant was taken before Mr. Karesh by the Deputy United States Marshal Eagan, at which time Mr. Karesh introduced himself or at least I indicated to Ballard, I said, "This is Mr. Karesh, the Assistant United States Attorney that

(Testimony of Thomas E. McGuire.)

is handling the prosecution of narcotic cases," and Mr. Karesh said, "Do you know why you are here, Mr. Ballard?"

Ballard replied, "Well, I have been arrested."

Mr. Karesh said, "That is very true, and you are being transferred to the City Jail here pending your release upon bail. Have you got an attorney?"

Mr. Ballard said at that time, "I am not sure whether I will get one or I need one or that some friends of mine might try to get one for me. I don't know whether I need an attorney."

Mr. Karesh said, "Well, you do, I think that you do need an [226] attorney, and I will explain to you, you know why you are being charged, why you are brought to this building."

He said, "Well, I got pinched, but I don't know the full details."

So Mr. Karesh said to him, "Well, you were charged with other defendants being engaged in narcotic traffic."

Ballard said, "Well, suppose I am not guilty."

So Mr. Karesh said, "That is something for the Court to decide. However, if you wish to make any statement or state any of the facts concerning your activities in the narcotic traffic I will be willing to listen and I would like to hear the full story."

So at that time Ballard—and then I interposed and I said, "Mr. Karesh, I don't know whether

(Testimony of Thomas E. McGuire.)

you are familiar with the fact that Mr. Ballard has told me within a day or two that he met another defendant by the name of McDonough, who is not in the office at this time, and McDonough and Ballard met at the race track in Oakland, at which time McDonough said to Ballard that he had a man that had some narcotics, at which time McDonough introduced Ballard to Ingoglia and there was a general conversation among them at that time if they could find somebody to dispose of the narcotics."

I was telling this to Mr. Karesh to bring him up to date with the general information.

The Court: This was in the presence of Ballard? [227]

A. In the presence of Ballard.

Mr. Karesh said, "Is that true, Ballard?"

And Ballard said, "Yes, I met this fellow a couple of days at the race track and I knew that he had some stuff and that he wanted to get rid of it, but what do I get out of it if I tell you the story?"

Ballard was told by Mr. Karesh that at this time there was nothing that he could get out of it, and what did he mean. So he said, "Well, will you dismiss the case?" And Mr. Karesh said, "I can't dismiss the case against you. As you stand, you are going to be indicted. The facts will all have to come out in court, but what we were trying to find out is what you know about the transaction."

(Testimony of Thomas E. McGuire.)

And then Mr. Karesh got up from his desk and went to the connecting door between his office and an adjoining office and he said, "As a matter of fact, you are being charged with standing outside of a door in this manner at a time in which a large package with a large amount of narcotics was passed through the door to the district supervisor, Mr. White." [228]

He said, "Now in this manner," and he indicated to Mr. Ballard the manner in which he had been told that the narcotics had been taken through this door.

So Ballard then—he said, "That is the condition. You were standing outside of the door and we know it, we can prove it. Now, do you want to tell us the facts of it, or what? Do you say that you don't know anything about it, that you could be standing outside that door when that package was passed through the door without knowing anything about it?"

Ballard shrugged his shoulders and said "It does sound ridiculous, but what do I get out of it? Will you dismiss this case against me now if I tell you the full story?"

And Mr. Karesh replied that he couldn't do so, and he wouldn't do so, and in all probability he would be indicted within a short while. At that time Ballard said, "Well, if that is the case let me get the hell out of here, I am going to have nothing further to say." So he stood by and asked

(Testimony of Thomas E. McGuire.)

to be returned to the Marshal's custody, which was done at that time.

Mr. Karesh: That is all.

Cross-Examination

By Mr. Deasy:

Q. Mr. McGuire, did you make any notes of the conversation that took place?

A. At the time that they were made?

Q. Yes. [229] A. No, sir, I didn't.

Q. Did you make any notes of the conversation at any subsequent time? A. No, I didn't.

Q. And the date of this conversation was in November, is that correct? A. Yes, sir.

Q. And since that time have you been engaged in the work of law enforcement in the narcotics division? A. Yes, sir, I have.

Q. And unquestionably talked to countless people in regard to cases since that time?

A. That is correct, sir.

Q. And you are testifying now completely from memory, is that correct?

A. Yes, sir, I am. [230]

Q. And this conversation took place approximately November 3, 1948?

A. That is correct.

Q. Now, at any time during this conversation did Mr. Karesh go out of the office and come back with some papers?

A. I don't recall any such incident.

(Testimony of Thomas E. McGuire.)

Q. During this time and during this conversation do you recall anything being said about probation?

A. I do not recall any conversation about probation.

Q. Would you say there was nothing said about probation?

A. No, I wouldn't say there was anything said—you mean relating to Ballard's probation, whether he was—You are confining yourself to the conversation between Ballard and myself and Mr. Karesh?

Q. I am confining myself, Mr. McGuire, to the conversation that you have testified to on November 3, 1948, in the office of Mr. Karesh, the United States Attorney.

A. Yes, sir.

Q. All right.

A. There was no conversation relative to probation. With regard to Ballard?

Q. That is what I am talking about.

A. No, there was not, not that I can recall.

Q. Was there any conversation in regard to probation between Mr. Karesh and Mr. Ballard in connection with another defendant [231] who had received probation?

A. I recall no conversation to that effect.

Q. Would you say there was no such conversation?

A. I will not say whether there were or were not. I don't recall it, Counsellor.

Q. Isn't this the fact of the matter, that Mr.

(Testimony of Thomas E. McGuire.)

Karesh said that if Mr. Ballard would become a Government witness, that he would make an effort to get the probation? Isn't that the fact of the matter?

A. I recall nothing said by Mr. Karesh relative to probation, because, if my memory serves me correctly, Counsellor—and I am testifying under oath, here—I would say that that conversation did not take place, because Ballard asked for a dismissal. There was no conversation relative to him coming into court. He asked would this case be dismissed against him. There was nothing said about probation.

Q. There was nothing said about probation?

A. Not that I can recall.

Q. Was there anything said about what would happen if Mr. Ballard stated that he saw Mr. Ingoglia pass a package through the door?

A. Was there anything said about that? Mr. Karesh had related what had taken place, and what information he had about it. I don't understand your questioning. Mr. Karesh did discuss that phase of the investigation. [232]

Q. What did Mr. Karesh say about Mr. Ingoglia passing a package through the door?

A. He explained and showed to the defendant Ballard——

Q. What did he say?

A. That is what I am explaining now, Counsellor, when you interrupted.

(Testimony of Thomas E. McGuire.)

Q. I didn't mean to interrupt you, and I am sorry I did. I was a little too impetuous.

A. Mr. Karesh was demonstrating the manner in which the package of narcotics had been passed through the door, at which time Ballard was standing immediately alongside me, and Karesh said, "Now, this is the way the package came through the door and you maintain that you were standing alongside—outside the door in the manner in which you are standing here, and you did not see this package being passed through the door?"

At that time Ballard then said, "Well, it does look ridiculous, and what do I get out of it? Will you dismiss the case against me?"

And at that time when Mr. Karesh stated that he would not, that was the termination of the conversation we had. So there was nothing that I can recall pertaining to probation.

Q. Was there anything said about any reward or immunity of any description that would be given to Mr. Ballard, or any consideration that would be given to Mr. Ballard if he would state that Mr. Ingoglia passed that package through the door?

A. There was absolutely no reward offered to the defendant. There was no promises made to him. The fact of the matter was the general discussion outside of the presence of Ballard, between Mr. Karesh and I was to the effect of Mr. Karesh doing something for the man. But that was outside of the defendant's presence. Mr. Karesh maintained

(Testimony of Thomas E. McGuire.)

that he would not dismiss the case nor would he offer or make any arrangements with the defendant whatever.

Q. My question, Mr. McGuire, was, Was there anything said to Mr. Ballard? Did you understand the question, Mr. McGuire? Not what was said between you and Mr. Karesh outside the presence of Ballard, but was there anything said to Mr. Ballard about any consideration being shown him?

A. I have stated no, sir, there was nothing that I can recall of Mr. Karesh making any promises to Mr. Ballard.

Q. However, there was a discussion, you stated, outside of the presence of Mr. Ballard, between you and Mr. Karesh?

A. Oh, yes, quite a bit of conversation relating to this case, the entire—all the phases of this case.

Q. Now, you tell me that Mr. Karesh informed Mr. Ballard that Mr. Ballard was being charged with standing outside of a door while narcotics were being passed in to Mr. White; is that what he said?

A. He stated that in substance, that that is one of the facts concerning this investigation, and in which he demonstrated. [234]

Q. Didn't you tell me on your direct examination just a moment ago that he informed Mr. Ballard that Mr. Ballard was being charged with the fact that he was standing outside a door while narcotics were being passed? Wasn't that your testimony?

(Testimony of Thomas E. McGuire.)

A. If I said it in those words, Counsellor, surely you understand that would not be a charge in the Federal court. The charge that I meant to bring out was that he was charged with a violation of the narcotic laws, and so far as he was then demonstrating the manner in which the narcotics was passed. That was one phase of the transaction, that Mr. Karesh was demonstrating for the defendant Ballard, the charge of him standing outside of the door, that indicating to Ballard that that was a condition, part of the proof that would be shown that Ballard was there, in that manner, and that he was standing outside of the door. Whether that was the exact charge, I don't recall Mr. Karesh ever saying that to Ballard.

Q. What I am asking now, Mr. McGuire, is this: Did you tell me in response to a question of Mr. Karesh not more than five or ten minutes ago that Mr. Karesh said to Mr. Ballard, "You are being charged with standing outside a door while narcotics were being passed through the door"? The question is, did you so testify on your direct examination?

A. I probably have said that, related that here on the witness stand since I have been here, yes, sir.

Q. Do you recall saying that? [235]

A. Yes, I do, right here now.

Q. That is what you said on your direct examination, is that correct? A. Yes.

Q. And that is what was told to Mr. Ballard?

(Testimony of Thomas E. McGuire.)

A. That was in substance told Mr. Ballard. Counsellor, you are taking exactly three words, whether Mr. Karesh related to him he was being charged with standing outside the door. I don't deny that I stated that here in my explanation of what Mr. Karesh was talking to Mr. Ballard about, but I am saying at the time Mr. Karesh talked to Ballard in his office, he was told he was charged with violating the narcotic law, and in furtherance of that, in the manner in which he violated it, was the fact that he was standing outside of a door when the narcotics was passed through it.

Q. You told me then a few minutes ago you were just giving me the substance, is that correct, of the conversation as to that particular phase of it. Now, start at the beginning, Mr. McGuire, and give me the exact wording, as near as you can recall, of everything that was said by Mr. Karesh, everything that was said by you, and everything that was said by Mr. Ballard in the presence of Mr. Ballard.

Mr. Karesh: He wants everything now. There are other defendants. There is a conversation about Mr. Ingoglia in there. If Mr. Deasy wants Mr. McGuire to state what was [236] said about Ingoglia and what was said about other narcotic men, it is all right with me. You have asked the question now and I can't protect Mr. Ingoglia at this stage, even if it is hearsay against him.

Mr. Dunning: I am going to continue to renew my objection that any reference to the defendant

(Testimony of Thomas E. McGuire.)

Ingoglia in this conversation is purely hearsay, and not binding upon the defendant Ingoglia.

The Court: I have already ruled that anything in the conversation brought out in the interview with Ballard would be received against Ballard and not as against any of the other defendants. It seems to me the conversations inquired into should be confined to the conversation with Ballard about Ballard's own alleged connection with these offenses.

Mr. Deasy: I will withdraw the question, if it please the Court, and I will ask you this:

Q. Tell me now, as near as you can recall, everything that was said by you, everything that was said by Mr. Karesh, and everything that was said by Mr. Ballard in connection with Mr. Ballard's activities in this particular case, in the exact words as nearly as you can recall.

A. On the occasion that Mr. Ballard was brought to Mr. Karesh's office in this building on November 3rd, the defendant was introduced to Mr. Karesh either by myself or directly by Mr. Karesh, that he was the United States Attorney, or I think I was [237] the one who told Mr. Ballard that Mr. Karesh was handling the narcotic cases and would be the prosecutor in this particular narcotic transaction.

Mr. Karesh asked Ballard did he know why he was being brought to this building, and why he was being questioned by the United States Assist-

(Testimony of Thomas E. McGuire.)

ant Attorney. Ballard said, "Well, I have been pinched, I know that, and there is supposed to be something about some narcotics."

Mr. Karesh said, "Well, you are charged with violating the Harrison Act. There are three or four other defendants with you. Now, I am very much interested in knowing how you come to be acquainted with Ingoglia."

I am repeating the conversation and trying to exclude the other defendants.

The Court: We understand. Go ahead.

The Witness: He said, "How did you get acquainted with Ingoglia? You know who Ingoglia is and you know the background of him.

He stated, "I don't know very much about Ingoglia," and at that time I believe I was the one who told Mr. Karesh that on a previous conversation that I had with Ballard, that Ballard had told me that he had met Ingoglia at the race track with McDonough, at which time McDonough had told Ballard that Ingoglia had a lot of narcotics, and that if Ballard knew any place where they could get rid of it. [238]

So Mr. Karesh then asked Ballard, "Is that so?" He said, "Well, I met him at the race track but I only know him a few days."

At that time Mr. Karesh said, "Well, you understand how you are involved in this thing, and involved in it in a rather serious way."

There were discussions about his attorney,

(Testimony of Thomas E. McGuire.)

whether he had an attorney, whether he was going to get an attorney. He had said he wasn't sure whether he would get an attorney or whether some friends would get it, or whether he needed one, and he was asking Mr. Karesh what he would have to do.

Mr. Karesh said, "Why not tell me the facts and all the circumstances, how you come to be involved in this thing?"

Ballard then asked him, "What is in it for me?"

Mr. Karesh said, "I can't tell you about that. You are charged to be released on bond. You have a right to get you an attorney. You will be indicted and then you can come into court and have your day in court, but I want to explain to you that you were standing in a hallway in Oakland, at which time a large package containing a large amount of narcotics was passed through the door."

And with that Mr. Karesh, with myself and Ballard, stood at the connecting door between the two offices in the suite of offices of Mr. Karesh's. Mr. Karesh indicated how the door was open, how the arm extended, and how the package was [239] passed through the door, and then he turned to Ballard and he said, "Do you mean to tell me that you were standing there with this man and you didn't see anything?"

At that time Ballard then stated, "Well, it sounds ridiculous." But he said, "What is in it for me? Will you dismiss these charges against me now?"

(Testimony of Thomas E. McGuire.)

And Mr. Karesh said, "That I will not do. You will be indicted and you will have your day in court, but we are here to ask you these questions and ask you if you want to tell us the story."

At that time Ballard then said, "Well, the hell with this. Let me get the hell out of here."

At that time the Marshal was called and he was brought away.

Q. As nearly as you can recall, you have related the conversation now as it took place between you and Mr. Karesh and Mr. Ballard with regard to Mr. Ballard's activity in this case, is that correct?

A. That is as near as I can recall it, counsel.

Q. Yes, and you are testifying from memory?

A. That is correct.

Q. You were referring to a conversation that you had had with Mr. Ballard the day before, or or a previous occasion?

A. Yes, sir.

Q. When was that previous occasion?

A. That was the day after he was arrested on a Monday. [240]

Q. Who was present at that conversation?

A. District Supervisor Mr. White and myself and the defendant Ballard, and in and out of the conference room at the City Jail in Oakland was Mr. Bertin. I am not recalling if he was there directly while the conversations were had, or not. He was with us in the City Jail. Whether he was present or not I can't answer.

(Testimony of Thomas E. McGuire.)

Mr. Deasy: That is all, thank you very much.

Mr. Dunning: I am going to ask that the court's ruling apply also to the second conversation that has been referred to here by Agent McGuire.

The Court: Yes, that applies to that conversation also. It will be received solely as against the defendant Ballard and not as against any of the other defendants. Any further examination of this witness?

Mr. Karesh: No.

Mr. Dunning: No questions, your Honor.

(Thereupon brief recess was taken.)

The Court: Call your next witness.

Mr. Karesh: Mr. Green.

Mr. Ehrlich: May we approach the bench, your Honor?

(Discussion at the bench off the record.)

Mr. Karesh: By consent of all parties, your Honor, may this case go over until tomorrow morning at ten o'clock?

The Court: That is agreeable to all counsel?

Mr. Ehrlich: Yes, your Honor.

Mr. Karesh: The request is made by all of us.

The Court: Ladies and gentlemen of the jury, I again instruct you that you are to observe the admonition I have heretofore given to you, and furthermore you are not to read newspaper articles concerning the case.

We will now adjourn until ten o'clock tomorrow morning.

(An adjournment was thereupon taken until tomorrow, Thursday, June 9, 1949, at 10:00 o'clock a.m.) [241a]

Thursday, June 9, 1949

The Court: You may proceed.

Mr. Karesh: Mr. Greene.

W. HAROLD GREENE

called as a witness on behalf of the Government; sworn.

The Clerk: Please state your full name to the court and jury?

A. W. Harold Greene.

Direct Examination

By Mr. Karesh:

Q. Mr. Greene, what did you say your full name was? A. W. Harold Greene.

Q. And where do you reside?

A. New York City.

Q. What is your occupation?

A. I am chief of identification of the Bureau of Internal Revenue of the Treasury Department, attached to the Alcohol Tax Unit.

Q. How long have you held that position?

A. Held that position for the last ten years.

Q. That is, for the United States of America?

A. Yes, sir.

Q. Where are your headquarters? [242]

A. New York City.

Q. And the headquarters cover what district?

(Testimony of W. Harold Greene.)

A. I have—my district covers all New England, six states in New England, New York, Puerto Rico, New Jersey and Delaware.

Q. What are the duties of your position?

A. The duties of my position, the criminology of fingerprints identification, classification, and instruction to the men in the field, the agents, which might entail the Secret Service, Alcohol Tax Unit, Intelligence, Coast Guard, Customs and Narcotic Agents.

Q. Tell me, have you had any special study in the matter of fingerprints? A. Yes, I have.

Q. What has that consisted of?

A. I took an instruction given by the Treasury Department in 1935 and then I availed myself of the opportunity from then on.

Q. Have you written any text-books?

A. Yes; I have just finished a book on single fingerprints. That is the only one written in this country.

Q. What do you mean by single fingerprints?

A. Single fingerprints is dealt with in criminology where you make a complete identification with just one fingerprint or a fraction thereof.

Q. How many fingerprints would you say you examine every year?

A. Approximately 100,000 prints a year. [243]

Q. And what is a latent impression?

A. A latent impression of the finger is a latent impression placed upon a surface by a person touching that surface.

(Testimony of W. Harold Greene.)

Q. Have you ever testified in court with relation to latent fingerprints?

A. Numerous times.

Q. What is an ink impression?

A. An ink impression is the rolling of a person's or subject's fingers that have been applied with ink upon a fingerprint card for future reference.

Q. Have you ever seen two people have the same prints?

A. No, sir. There is a possibility, there is one possibility on record out of six billion prints—that is four times the number of people in the world—at the ratio of one billion five hundred million, there is one record of identical prints being the same. That was in the United States Navy about twenty five years ago, a pair of twins, they had the same identificial prints on all ten fingers.

Q. With that one exception you have never heard of another instance where two people had the same prints?

A. There is none on record to my knowledge.

Q. Is there a certain type of paper that takes prints more easily or latent prints more easily than other types of paper?

A. There is.

Q. I am going to show you U. S. Exhibit No. 19, this brown [244] paper, here, and ask you if——

A. May I have that table or desk?

(A desk was placed in front of the witness.)

Q. I show you United States Exhibit No. 18 for Identification. First of all, I will ask you whether

(Testimony of W. Harold Greene.)

or not you have ever seen that particular piece of paper before.

A. I examined this paper in January, 1949, while I was here in San Francisco from New York, and I found no discernible fingerprints on this, due to the fact that there were many smudges where there had been fingerprints, but there were no discernible ones that could be detected and identified.

Q. Did you see the paper in the same condition it is, that is, discolored, at the time you examined it?

A. It was.

Q. Is that a type of paper which is difficult to detect latent impressions?

A. This is a soft-textured paper and all wrapping papers and bags and papers of this type are soft-textured, and therefore will absorb any moisture placed upon it very easily, and, after all, a latent fingerprint is moisture—about 98½ per cent of the fingerprint itself contains water, the other 1½ per cent contains a composition of *ureo*, fatty acids and albumen. Now, if a fingerprint was placed upon this paper it would be similar to paper of a newspaper, which is very absorbent, and the softer the paper the quicker the print will disappear, due [245] to the absorption by the paper.

Q. You say you have examined that paper and found numerous smudges. Did you find any latent impressions with sufficient markings from which you could make identification? A. I did not.

Q. How many markings must you have on a latent impression from which you can make an iden-

(Testimony of W. Harold Greene.)

tification, if you have, of course, an exemplar to make a comparison?

A. I have made it with as much as six or seven, but eight, nine to twelve is sufficient. In this case you have 14 similar characteristics that are identical.

Q. In this case, referring to the envelope I will show you shortly? A. That is right.

Q. U. S. Exhibit No. 31 for Identification. Did any of the smudges have any markings at all on them?

A. Several different smudges have ridges that you can see with the naked eye without using a magnifier or the glass, but they are so broken up by overhandling and overlapping with other fingers that you could not pick them out, you could not make them discernible to the eye or the magnifier.

Q. Therefore it is impossible to determine whose prints are on that package?

A. That is right.

Q. What is this substance, do you know, that discolored the [246] paper?

A. This is silver nitrate solution.

Q. If you place silver nitrate on a piece of paper, will it preserve a print?

A. It preserves a print indefinitely.

Q. Have you seen United States Exhibit No. 31 for Identification? A. I have.

Q. When did you see it?

A. I saw it here in January when I was here,

(Testimony of W. Harold Greene.)

and I also had it in my possession in January, from January on.

Q. Then did you bring it back and return it to the office of the Bureau of Narcotics here to Mr. Grady? A. I did.

Q. Have you ever seen this document which I show you, a fingerprint card, U. S. Exhibit 17 for Identification? A. I have.

Q. Where did you see that, and what is it?

A. That is a fingerprint card of ten fingers of a person.

Q. Whose name is on that card?

A. John Stoppelli, the defendant.

Q. Did you make a comparison with the print on the envelope—there is a print on the envelope, isn't there?

A. There is, positively, yes.

Q. Did you compare the print on the envelope with the print [247] on the card, here?

A. I did.

Q. Now, tell me, when did you first hear from the San Francisco Office that they wished you to make some fingerprint analyses?

A. The last few days of November, 1948.

Q. What was sent to you?

A. Through the——

Mr. Ehrlich: To which we object, your Honor, on the ground it is incompetent, irrelevant and immaterial.

The Court: What was the question, "What was said to you?"

(Testimony of W. Harold Greene.)

Mr. Karesh: What was sent to you.

The Court: "Said" or "sent"?

Mr. Karesh: Sent.

Mr. Ehrlich: I thought you said "said." Withdraw the objection.

Mr. Karesh: That is my Southern accident.

A. Contact prints, small contact prints of a latent print found on the surface of envelopes were sent to me in to New York, they were sent to the New York Office of the Narcotic Bureau, which in turn turned them over to me.

Q. And from those photographs you made an identification? A. I did.

Q. Later on when you came out here you finished that identification, is that right? [248]

A. I did.

Q. By the way, did you have extra copies of the fingerprint cards? A. I do.

Mr. Karesh: Maybe we can give some to counsel.

A. Surely.

(Mr. Karesh handed some documents to counsel.)

Mr. Karesh: May I pass some of these out to the jury?

The Court: No, not until they are received in evidence.

Mr. Deasy: Do you have another copy of this?

Mr. Karesh: Yes. Do you want to continue looking at them? Maybe we better give them one apiece over there (handing other documents to counsel). You two can look at one.

(Testimony of W. Harold Greene.)

Q. (By Mr. Karesh): What is this that I hold in my hand. I now give to you.

A. This is a chart that I have made up with enlarged replicas of latent fingerprints of John Stoppelli, and the known fingerprints of John Stoppelli.

Q. Now, where did you get the latent prints of John Stoppelli from?

A. From the envelope that I examined and identified.

Q. Is this the envelope? A. That is.

Q. That is the latent impression?

A. That is right.

The Court: What exhibit is that? [249]

Mr. Karesh: That is United States Exhibit 31 for Identification.

Q. The print on United States Exhibit 31 for Identification that we call the latent impression is the latent impression that you made on this card? It is a photograph, isn't it?

A. That is right.

Q. Then you have the known fingerprint. What is that?

A. That is the ink impression of the defendant John Stoppelli that was taken when he was arrested.

Q. You are referring now to United States Exhibit No. 17 for Identification, is that right?

A. That is right.

Q. Now, what finger does it represent?

A. That represents the ninth finger or the ring finger of the left hand.

(Testimony of W. Harold Greene.)

Mr. Karesh: At this time, may it please your Honor, we would like to mark for identification this fingerprint identification. We would like to have the latent fingerprint marked one number and the known fingerprint marked another number.

The Court: Very well, they will be marked.

Mr. Ehrlich: What are those numbers?

The Clerk: 35 and 36 for Identification.

Mr. Karesh: Which is 35?

The Clerk: It will be the latent, and 36 the known.

(The cards were marked, respectively, the latent 35 and the known 36 for Identification.)

Q. (By Mr. Karesh): The latent 35, U. S. Exhibit No. 35 for Identification, and the known print is U. S. Exhibit 36 for Identification. In other words, sir, U. S. Exhibit No. 36 for Identification is the same as U. S. Exhibit 35 for Identification, is that right?

A. That is right, and 36.

Q. And the photograph of U. S. Exhibit No. 36 came from this card, U. S. Exhibit No. 17?

A. That is right.

Q. Now, whose print is on this envelope?

A. John Stoppelli's.

Q. By John Stoppelli do you mean the defendant John Stoppelli that is in the courtroom?

A. Yes, sitting over there on the right.

Q. Now, how did you come to that conclusion

(Testimony of W. Harold Greene.)

that the print on the envelope is the print that belongs to John Stoppelli, the defendant?

A. We have a national book, every district supervisor in the country, in the Narcotic Bureau, has a national book published by the Narcotic Bureau, all of the major known——

Mr. Karesh: Just a minute, pardon me——

Mr. Ehrlich: I——

The Court: Yes.

Mr. Karesh: Just a minute. Q. I am asking you how did you make your—— [251]

Mr. Ehrlich: Pardon me a moment, Mr. Karesh. I ask that, 1, the witness be instructed not to volunteer, and, 2, I assign the statement made by the witness as prejudicial misconduct, and on the part of the district attorney inquiring for it, and, 3, I respectfully ask the court to instruct the jury to disregard it.

The Court: Yes. I first instruct the witness to confine his answers to questions. Don't go beyond the scope of the question asked by counsel. I strike the answer this witness just made in so far as he made an answer, and I instruct the jury to entirely disregard the answer which I have just stricken from the record. Any and all matters that are stricken from the record must be entirely disregarded by the jury. Proceed.

Q. (By Mr. Karesh): How do you know that the latent impression and the known fingerprint, which you say is the known fingerprint of John Stoppelli, how do you know they are the same?

(Testimony of W. Harold Greene.)

What is the basis of that opinion? That is what the jury would like to know.

A. The basis of that is the 14 points of comparison that I have enumerated on the chart.

Mr. Karesh: Now, your Honor, at this time we would like to offer in evidence United States Exhibits Nos. 35 and 36, so that they may be passed on to the jury, that they may see them as Mr. Greene tells them how he reached the conclusion. [252]

The Court: They will be received.

Mr. Dunning: I assume they are being introduced as to one defendant?

The Court: Yes.

Mr. Karesh: No, may it please your Honor, at the end of this we will make our offer as to all the defendants. At this time it is only offered as to the defendant John Stoppelli.

The Court: It will be so understood.

(The charts referred to were marked U. S. Exhibits 35 and 36 in evidence.)

(Mr. Karesh handed copies of the charts to the jury.)

The Court: You are handing to the jury copies of this exhibit?

Mr. Karesh: Yes, United States Exhibits 35 and 36.

The Court: Of course, Counsel has not seen the copies that you handed them.

Mr. Karesh: Yes, they have, I handed them to counsel.

(Testimony of W. Harold Greene.)

The Court: They have copies, but whether they are the same as the copies handed to the jury I don't know. I assume they are.

Mr. Karesh: They are the same, your Honor.

The Witness: Positively.

Q. (By Mr. Karesh): Make the explanation to the jury as to how you reached your conclusion.

A. These are comparable characteristics of the latent print [253] which is on the left-hand side of the page which you hold in your hand and the next print which is on the right-hand side of the page.

Characteristic No. 1 is a downward bifurcation—

Q. What does that mean?

A. A bifurcation is where a ridge would run along in a certain direction in the finger and all of a sudden diverge, one part going to the right and one part going to the left, the same as a fork in the road, if you are driving an automobile you come to a fork in the road, or it may be two ridges running parallel to each other and one will diverge to the right and one to the left.

Q. Go ahead. As you come to technical terms you explain the technical terms to the jury.

A. Yes, sir. The No. 1 characteristic is a downward bifurcation forming the upper bridge of the delta and the first complete ridge running in front of the delta.

A delta is the formation of a bifurcation at a certain point in the pattern of a fingerprint which gives you a ridge count from the delta to the core of the pattern, and the core of the pattern in a

(Testimony of W. Harold Greene.)

fingerprint is the innermost recurring ridge of the pattern.

Q. You referred to point 1?

A. That is point 1.

Q. Now, will you go to point 2? [254]

A. Point 2 is a downward bifurcation, the third ridge slightly above and to the right of No. 1 characteristic, so noted in the latent fingerprint and the known fingerprint chart.

Q. In other words, everything that appears in point 1 in the known print is likewise in the latent print?

A. That is right.

Q. These are your points of comparison, 14 points of comparison, that is what you mean?

A. Yes, sir.

Q. Go ahead.

A. No. 3 characteristic is a downward bifurcation forming the upper part of the delta, which the back ridge of the delta goes to form a part of the downward bifurcation of characteristic No. 1.

If you will look at No. 1 characteristic on this you will see where the top bifurcation points downward to No. 3 bifurcation, and a part of that bifurcation is the back ridge of the delta.

Q. Go ahead.

A. No. 4 is an upward bifurcation forming the lower part of the delta, one ridge running to the left and the other ridge running to the right to form the delta, as I just explained earlier, and a bifurcation. No. 4 is a ridge beginning or ending—that is something that has never been determined,

(Testimony of W. Harold Greene.)

where a ridge begins or where it ends. When it stops abruptly [255] in a fingerprint it might be the beginning of a ridge and run continuously in circles and zigzag formation, or it might be the end of that ridge which began in another aspect of the fingerprint, itself.

There is a ridge beginning or ending in the latent fingerprint which forms the ridge below the left ridge of the lower bifurcation, while in the known fingerprint this ridge has the appearance of forming an upper bifurcation, which is due to pressure exerted upon the finger while the fingerprint was being taken.

In many instances you will find two prints side by side running parallel with each other, and in between those two prints you will find a ridge ending or beginning. That is in the latent fingerprint. In the known fingerprint, where the extra pressure on the fingerprints in rolling an impression of the subject, that much pressure impresses or pushes the bulb of the finger on the smooth surface, so that pushes that ending or beginning of the ridge against one side or the other of the adjoining ridges, and it might have the appearance of being a bifurcation.

No. 6 a ridge ending or beginning in the latent fingerprint, while in the known fingerprint this ridge has the appearance of forming an upper bifurcation, as in characteristic No. 5.

That I just explained. [256]

No. 7, In the latent fingerprint this is a ridge ending or beginning, but in the known fingerprint,

(Testimony of W. Harold Greene.)

this ridge has the appearance of being attached to the ridge above it to form an upward bifurcation.

No. 8, A ridge ending or beginning two ridges below characteristic No. 7, in the latent fingerprint, while in the known fingerprint this ridge seems to be attached to the ridge directly about it to form an upward bifurcation.

No. 9 is an upward bifurcation forming the lower part of the delta attachment, directly below characteristic No. 4.

And No. 10 is an upward bifurcation, the lower ridge forming the lower part of the delta going to the right, while the upper ridge of the bifurcation passes in front of the delta.

No. 11, a ridge beginning or ending, the fourth ridge in front of the delta.

No. 12, the broken core of the pattern.

No. 13 is the innermost recurving ridge of the core of the pattern, of the fingerprint.

No. 14 is a ridge beginning directly above characteristic No. 1 and seven ridges from the innermost recurving ridge of the pattern of the core.

Those are the fourteen characteristic points. The same are identical in all phases as far as relationship of one to the other.

Q. In other words, you have fourteen points of comparison or [257] fourteen points of similarity?

A. Fourteen points of comparable characteristics.

Q. Do you consider fourteen points sufficient to make in your mind a positive identification?

(Testimony of W. Harold Greene.)

A. I do.

Q. What is the minimum number of points of similarity required to make identification?

A. There are records of positive identification being made on as low as five or four. I have never gone below six, myself.

Q. But you consider fourteen——

A. Fourteen is very good.

Q. ——very sufficient. Now, tell me, that envelope, has that been treated, United States Exhibit No. 31 for Identification, has that been treated with any substance?

A. Yes, that has been treated with silver nitrate solution.

Q. What is the purpose of the silver nitrate solution?

A. To bring out the fingerprints and intensify any prints if there are any prints on the object.

Q. Does the silver nitrate solution preserve the print?

A. The silver nitrate solution preserves it.

Q. How long will that print on U. S. Exhibit 31 for Identification, how long will it last, would you say, after it is treated?

A. With this silver nitrate solution treatment on this particular piece of paper or any other paper of hard sizing or fairly hard sizing or bond paper, they should last fifteen or twenty years, provided you don't put them in the sun light. [258]

Q. That is after it has been treated?

(Testimony of W. Harold Greene.)

A. After it has been treated with silver nitrate solution.

Q. Let me ask you, under ideal conditions, before the envelope was treated how long would the print remain on there?

A. On this type of paper, which is a sort of soft textured paper, that envelope, I would say from my experience the print would not be—would not last under ideal conditions any more than from 2 to 3 to 4 weeks at the most, provided it wasn't handled.

Q. In other words, it is your testimony that that print on U. S. Exhibit 31 for Identification had been placed on there no more than four weeks prior to the time the envelope was treated with the silver nitrate solution?

A. I would say that is right, yes.

Q. It would not be a year?

A. Oh, no, no.

Q. Now, you are referring to a print on the envelope—I notice there are several markings on that envelope, several writings. What particular print are you referring to that you have talked about and has now been identified as the latent impression on the photograph U. S. Exhibit 35 for Identification?

A. I refer on this envelope to the lower right-hand corner, to the front surface here of the envelope, and toward the side of the envelope, as the latent print in question. [259]

Q. I am wondering whether we could put a mark, an "X" on this envelope. Have you got a pen?

A. I have.

(Testimony of W. Harold Greene.)

Q. Within the circle.

A. My initials are right next to the latent fingerprint for identification, in red ink.

Q. It is not on any other place on the envelope, your initials?

A. My initials on this envelope—I found another fingerprint on this envelope, and I initialed that also.

Q. Now, you have your initials on two places on the envelope.

A. Oh, yes, that is right.

Q. We are now speaking of the print adjacent to the word “thirty-one” written in the left-hand corner.

A. That is right.

Q. I think that has been sufficiently identified. Now, tell me something, could you tell whether or not John Stoppelli put his finger on there? Is it possible that a stamp made that print?

A. No, he had to touch the envelope. No stamp can be made—that is too easily detected an experienced person.

Q. What do you mean about “easily detected”? How could you detect that wasn’t, let us say, a forged fingerprint?

A. Well, forged fingerprints are so rarely done, but when they are done they are so easily detected, for the simple reason you transport a fingerprint from one surface to another, and [260] when you take off a fingerprint for transposition to another surface you break up the ridges, and that is the first notable thing that an experienced person looks for,

(Testimony of W. Harold Greene.)

and when any doubt might come in his mind of that he would resort to use of poroscopy, the study of pores.

Q. How do you spell that?

A. P-o-r-o-s-c-o-p-y.

Q. Go ahead.

A. First you study poroscopy, a study of the pores. Your ridges have many pores on the skin on the fingers, that is what actually makes the fingerprints, and you would find the impressions of the pores, themselves, would be all torn and spread and placed in different positions from the transposition.

Q. Mr. Greene, then it is your testimony that you are positive that John Stoppelli held this envelope in his hand and what finger?

A. That is the ring finger of the left hand, the ninth finger.

Q. He held it in his hand?

A. The ninth finger is what we call it on the fingerprint card. You start with No. 1 is the right thumb; the right index finger is No. 2; the middle finger of the right-hand is No. 3, and the ring finger of the right hand No. 4 on the fingerprint card; and the little finger of the right hand is the No. 5 finger; and the thumb on the left-hand is the sixth finger on the fingerprint card; No. 7 is the index finger of the left hand, No. 8 is the middle finger of the left hand, No. 9 is the ring finger [261] of the left hand, and the tenth finger on the fingerprint card for classification purposes is the little finger of the left hand.

(Testimony of W. Harold Greene.)

Q. You now hold in your hand, you have United States Exhibit 17 for Identification: With particular reference to what finger is that?

A. The ring finger of the left hand, No. 9.

Q. Now, can you state, sir, whether at the time John Stoppelli held that envelope in his hand, whether or not that envelope was empty, or whether or not it contained something?

A. I would say it contained something.

Q. And what would you say—what kind of substance, if you know, did it contain?

A. Well, from my experience it had to be a powdery substance, for the simple reason that the intensity of the fingerprint, the latent fingerprint on this particular envelope, shows that the right side as you look at it, or the left side of the fingerprint itself, that the duct covering a part of the delta, the duct on the ninth finger of the left hand, that when there is a powder in an envelope of any type, and especially after it has been placed in the glassine envelope and placed in this envelope, that anyone that grasps the envelope, there is a movement of the powder inside, because naturally we have to put more pressure on the holding of an object in this case with that content in the envelope than you would if the envelope was just as it is now.

Q. You call that an intensified latent impression?

A. The right side of the picture in your charts will show you what I mean by intensity of the latent print itself and not the next print.

(Testimony of W. Harold Greene.)

Q. Will you explain that to the jury, the intensity?

A. The intensity was made there due to the holding of heightened pressure being placed upon that part of the finger when he grasped the envelope and, after all, the envelope was laying on his ring finger with his left hand in this fashion.

Q. (By Mr. Ehrlich): What fashion was that?

A. In that fashion (indicating). As the movement of the powder inside the envelope or the two envelopes sort of moved, because he had to exert a little pressure. You still would not get the bulged surface or, I would say, the concavity surface of the material in the package. You would get a concavity in the package after you placed the finger by gripping it, the same as we have all had the experience of buying sugar in a bag in a store, and when you grasp the bag of sugar, your fingers to a certain extent, one side or the other, each finger will make an impression in the bag as you hold it.

Q. (By Mr. Karesh): How did he grasp that, in your opinion?

A. In my opinion, he grasped it this way (indicating), which would be the natural way for placing something in the envelope with the right hand and, after all, men of experience of that type—

Mr. Ehrlich: Your Honor—

Mr. Karesh: We will ask that go out.

Mr. Ehrlich: Your Honor, this witness is too anxious. May I suggest that he be cautioned?

(Testimony of W. Harold Greene.)

The Court: Yes, be very careful. You have had experience as a witness in such matters. Be careful and restrict your answers to the question asked.

Q. (By Mr. Karesh): Can you see that it was grasped on the back by a thumb?

A. There have been fingerprints of that area on the back of the envelope, overlapped by several fingerprints, and it just shows ridges. There is no identification made on the back side of the envelope.

Q. Why did you say there was no identification?

A. Because of the overlapping of several ridges and prints that were not discernible.

Q. You have another latent impression there with several markings on it that you have your initials inside of. How many markings there, if you know?

A. Well, as latent prints go, this is a very good latent print.

Q. But you have been unable to find out whose print that is?

A. I have been unable to identify it to anyone I have examined it with and compared it with.

Q. In other words, you have only been able to make one identification; so far as the other is concerned, you can't tell who it [264] is?

A. I know definitely the other print is not John Stoppelli's.

Mr. Karesh: That is all.

May I at this time, Your Honor, offer the en-

(Testimony of W. Harold Greene.)

velope, U. S. Exhibit 31, as well as U. S. Exhibit 17 for identification, with particular reference to the ring finger, in evidence against John Stoppelli?

The Court: It may be received.

(United States Exhibits No. 17 and 31 for identification were thereupon received in evidence.)

Cross-Examination

By Mr. Ehrlich:

Q. Mr. Green, as I understand it, you first studied this subject in 1935, is that correct?

A. 1935 I started, yes.

Q. For what length of time did you study it?

A. I studied from then on up to the present date.

Q. In other words, you work at this all the time?

A. Continually, nothing else.

Q. I take it that in your work for the Government you only testify for the Government, is that right?

A. I have, yes, in Federal Courts and other courts, city and state.

Q. You have, I take it, a complete background in the subject? A. I think I have.

Q. From a study of the subject can you tell us when was the [265] first time in history when fingerprints were used?

A. Fingerprints were used by the Babylonians and during the Tang dynasty from 608 to 907.

(Testimony of W. Harold Greene.)

Q. And when was it used by the Babylonians?

A. In the year of 400 B.C.

Q. And the Chinese used it from 608 to 907?

A. That is right, as a means of identification.

They used it as a means of identification whereby they used it—the Babylonians also used to make an impression of their thumb in clay when it was a question of documents to be signed or identified in wills and bequeaths and so on.

Q. Bequests, you mean? You do not mean bequeaths. A. Well, bequests.

Q. Isn't it a fact that the Chinese never used it until the 12th century?

A. No, I wouldn't say it was.

Q. That is not a fact? A. No.

Q. Isn't it a fact that the Government of the United States during the war told all its fingerprint experts that the Chinese were the first to use it and used it in the twelfth century?

A. I don't know what the Government did.

Q. You remember that?

A. I didn't take that instruction. I had it with the Government before the war. [266]

Q. Would you say the Government teaching its Army and Navy personnel that the Chinese first used it in the twelfth century, would you say that that was wrong?

A. To the best of my knowledge. I think they used it before.

Q. Would you answer my question, please?

(Testimony of W. Harold Greene.)

Would you say it was wrong if the Army taught its personnel its first use was by the Chinese and that was in the twelfth century?

A. Well, I wouldn't say it was wrong and I wouldn't say it was right.

Q. But at least that disagrees with your opinion, is that right?

A. That disagrees with my opinion.

Q. When is the first time that fingerprints were used for the identification of criminals?

A. The first record that I found was an Italian lawyer by the name of Quintilian. That was probably—I will get the exact date as close as I can—in the sixteenth century in Rome, in a murder case, where a stepson was accused of killing his father, and at the scene of the crime they found palmprints and fingerprints on the wall, and the defense attorney——

Q. Pardon me for interrupting you, but when was that, please?

A. In the sixteenth century.

Q. The sixteenth century, and that was used by an Italian? A. Yes.

Q. And, I take it, that must have been in Italy?

A. Yes, in Rome. [267]

Q. Isn't it a fact that it was first used, not in Italy, but in India, and it was first used in the year 1880? A. No.

Q. For the identification of criminals?

A. Not as far as I am concerned, no.

(Testimony of W. Harold Greene.)

Q. Isn't it a fact that the Government of the United States in training its men in the OSS during the war taught that it was first used for the identification of criminals in India and in the year 1880?

A. I don't know what they taught.

Q. Would you say that that was wrong?

A. I say if they said 1880, it was wrong.

Q. When was the first general use by a criminal investigation department of any kind? When was the first general use made of fingerprints?

A. The first general use, used by a crime investigating agency, was Scotland Yard in 1898, Father Galton and Sir Henry Hurschel, who was prior to that time in Nepal, in Bengal, India, as director of police.

Q. Did you know that the United States Army and Navy in teaching its men said that it was first used—did you say 1898?

A. 1898 by Scotland Yard as an agency.

Q. Yes, as an agency. A. Yes.

Q. ———said it was used in 1890; would you say that that was [268] wrong?

A. I wouldn't say it was wrong, I wouldn't say it was right. I was talking about the question you asked me.

Q. But it disagrees with what you say, is that right? A. That is right.

Q. We will get a little closer to home. When was it first introduced in the United States?

(Testimony of W. Harold Greene.)

A. It was first introduced in the United States as a means of identification in the latter part of 1906 by the United States Navy, and on January 1, 1907 it was taken over by the Navy, and in 1913 it was set up—a bureau of investigation in Washington, and those records were placed at Leavenworth Penitentiary, and in 1923 the FBI took over.

Q. Let us take a piece at a time. You are an expert and I am not. I can't follow all of that. Just answer my first question, please. You said it was first used in the United States in 1906?

A. In the latter part of 1906 as a means of identification.

Q. That is all we are talking about. Did you know that the Government of the United States taught its Army and its Navy that it was first used in 1903?

A. I didn't know it.

Q. Would you say that that is not true?

A. I am not concerned with what they taught the Army.

Q. Would you be kind enough to answer my question? Would you say it was true? [269]

A. I wouldn't say it was true and I wouldn't say it was right.

Q. You mentioned Leavenworth, didn't you?

A. Yes.

Q. When was the first time Leavenworth adopted it?

A. They were placed—after the Navy started the use of investigation, the use of identification by

(Testimony of W. Harold Greene.)

means of fingerprints on January 1, 1907, those records were kept from then on——

Q. When did Leavenworth first start to use them, please? 1907?

A. Not to use them. They were kept there, the records.

Q. When did they first start fingerprinting at Leavenworth?

A. When did they first start fingerprinting at Leavenworth?

Q. Yes. A. At that time.

Q. 1907? A. Yes.

Q. Well, if I tell you that the United States Government——

Mr. Karesh: Mr. Ehrlich, may I interrupt you? When you say the United States Government, who in the United States Government? I will ask you to lay a proper foundation for that question.

Mr. Ehrlich: I presume that in teaching the soldiers and in teaching the Army, Navy, Marine Corps and Coast Guard, I have no way of knowing who taught it. I am asking this man, who says he is an expert, whether he knows these things, and if he says they are wrong, they are wrong. If he says they are right, they [270] are right.

Mr. Karesh: Will you concede that if he says they are wrong, they are wrong and if they are right they are right?

Mr. Ehrlich: That is what he says, yes.

The Court: Proceed.

(Testimony of W. Harold Greene.)

Q. (By Mr. Ehrlich): Isn't it a fact that Leavenworth and Sing Sing first commenced using it in 1904 for identification of alleged criminals?

A. Not to my knowledge, no.

Q. And if I tell you that that was what was taught by the United States Government to its military forces, you would say that that was wrong?

A. No, I wouldn't say it was wrong and I wouldn't say it was right.

Q. In any event, that disagrees with you, doesn't it? A. It disagrees with me entirely.

Q. When was it generally adopted?

A. Generally adopted by the United States Navy as a general rule of this country for identification from then on up to the present time.

Q. When did the peace authorities——

A. From that time on. Certain police authorities and cities adopted fingerprinting.

Q. From what time? A. From 1913 on.

Q. Now, the United States Government in teaching its men during the war, taught them that the International Association of Chief of Police in 1906 adopted it; would you say that that was wrong?

A. I told you in 1906 it was first used as a means for identification, the latter part. It was adopted by the Navy in 1907, on January 1st.

Q. The Government did not teach it; it was adopted by the Navy. The Government taught it was first adopted by Leavenworth in 1904. Would you say that that was wrong?

(Testimony of W. Harold Greene.)

A. I would say it was not adopted by Leavenworth in 1904 at all. They did not get the records out there—start to get records out there until 1906.

Q. Do you mind if I read this to you?

Mr. Karesh: May I ask what you are reading from?

Mr. Ehrlich: Yes. I am reading from the actual instruction sheets given to men in the field.

Mr. Karesh: By whom?

Mr. Ehrlich: By the Army of the United States.

Mr. Karesh: When?

Mr. Ehrlich: During this last war. I can't give you the date.

Mr. Karesh: Counsel, I have one here, too.

Mr. Ehrlich: Please read it and you will see my dates are correct.

Mr. Karesh: I still do not know what you are reading from. [272]

Mr. Ehrlich: I am just reading to him. May I continue?

Mr. Karesh: Tell me what you are reading from. I want to know.

Mr. Ehrlich: I have just told you, sir.

Mr. Karesh: What?

Mr. Ehrlich: The instruction sheet given to the Army of the United States, the OSS——

Mr. Karesh: Did you say the OSS?

Mr. Ehrlich: Yes, the OSS, too.

Mr. Karesh: Thank you.

(Testimony of W. Harold Greene.)

Mr. Ehrlich: Mr. White is a member of that. He ought to know.

“The wardens of Sing Sing and the United States Penitentiary at Leavenworth, Kansas began the fingerprinting of persons incarcerated in or employed by these institutions about 1904.”

Q. Is that correct?

A. I would not say it was correct.

Q. When did Leavenworth start keeping the files?

A. The latter part of 1906 and the first of 1907.

Q. When did the FBI get them? A. 1923.

Q. If I told you that the FBI got them in 1924, would that be wrong?

A. It would be wrong as far as I am concerned. That is what [273] they set it up for in 1923.

Q. This tells me that the Leavenworth files were given to the Federal Bureau of Investigation in 1924. Would you say that that was wrong, sir?

A. As far as I am concerned, it is wrong.

Q. And the files of the FBI, on what system are they based?

A. What do you mean, what system?

Q. Well, there must be some basic system upon which they base their files or which they follow.

A. You mean they conduct the files?

Q. No, what system. I take it from what you said before there were two or three different kinds of systems.

A. They use the Henry system with their own

(Testimony of W. Harold Greene.)

certain modifications and additions. Basically the Henry system is used for all fingerprints practically throughout the world now.

Q. So that everything in connection with the matter in the Henry system as taught, that is the basis upon which you have made these comparisons?

A. That and the Batley single fingerprints from Scotland Yard.

Q. Isn't it a fact that all identifications are made on the full two hands?

A. Positively no.

Q. Isn't it a fact—I understood you to say you were the only one who made an identification on one finger—— [274]

A. No, you misunderstood me, if you understood it that way.

Q. I am sorry. You wrote a book on it?

A. I wrote a book on it.

Q. You are the only man who did?

A. I said that was the only book written in this country on single fingerprints to date.

Q. I didn't understand you to say this country, but you qualified it by this record.

A. Yes, it is in the record.

Q. Are there books on single fingerprints written in other countries?

A. Mr. Batley wrote the original book on it. I used some of his basic principles, not all of them, with my own modifications and additions.

Q. But isn't the system followed by all examiners based on the full cards——

(Testimony of W. Harold Greene.)

A. Fingerprint cards?

Q. Yes. May I have it, please? Based on all the fingers and then each finger and some individually?

A. If you are talking about making a classification of that card, you make a classification of the ten fingers, but when you come to identification, where you deal solely with one finger, you are not concerned about the other nine fingers.

Q. Explain to me, please, why after taking each one individually, they take each hand. What is the purpose of that? There must be some reason for it.

A. The reason for taking the roll impression, the top [275] impressions here and these lower impressions here, is to get the fixed points. The fixed points are the delta and the core, and all characteristics, as to injuries and so on, that may be on the side of the finger. Then at the bottom you will note that the plane impressions, that we call the plane impression or just the inking impression of the fingers, are placed upon the card thusly to give you the core mostly of the pattern. In some cases the delta also shows where it is very close to the core.

Q. Mr. Greene, isn't it a fact that the reason that each hand is taken in the actual position of the fingers and the thumb is because if you misplace or change the position of one of these single ones, you can't make an identification, isn't that true?

A. Say that again, please.

(Testimony of W. Harold Greene.)

(Question read.)

A. Do you mean if one of the fingers was placed in another position on the card that you can't make an identification?

Q. I am asking you, sir. I am not an expert on that subject.

A. I am asking you if you mean by misplacing one of the fingers on the card——

Q. Changing them.

A. All right, changing them. Regardless of what position those fingers are on the card, that would never stop an identification.

Q. It would never stop it?

A. No, sir, because you go by the finger itself regardless of [276] what position it is on the card.

Q. Would you say that this was wrong? "The transposition of two or more fingers on the card probably will result in a totally different classification preventing identification."

A. That is a different thing entirely from identification. That is for classification purposes. If you take the card——

Q. In other words, you could not classify it but you could identify it, is that correct?

A. You could classify it, but if you will let me explain it——

Q. What did you mean when you said a different thing. I want to follow you.

A. This fingerprint card, you start with the right

(Testimony of W. Harold Greene.)

thumb at the top of the fingerprint card to take an impression and put the impression on this card. The index finger is next, the middle, the ring finger and the little finger of the right hand on the top row. Many times carelessness is expedient in taking these prints by certain agents. It happens quite often. An agent will take the left hand completely on the top and he will put the right hand at the bottom. Unless you are an experienced classifier, that will throw your classification off completely. Then you have to know when the right hand is concerned and the left hand. Then the idea is to mark the card accordingly, where it says right hand at the top, left hand at the bottom, you just reverse them and you make the classification as it is right there. [277]

Q. I asked you, Mr. Greene, whether the change of one finger would not prevent classification and identification. You said it would not.

A. It would not.

Q. I read to you the statement where two or more fingers on a card probably will result in a totally different classification, permitting the identification when the search is made, and you now tell me about a whole line. I am not asking you that. I am asking you if what I just read to you is true or untrue. Can you answer that?

A. If a card has not been classified properly, you will not find it in a search.

Q. All right, you can't find it.

(Testimony of W. Harold Greene.)

A. But for identification purposes——

Q. So that—pardon me.

A. For identification purposes you are dealing with the individual fingers as single fingerprints.

Q. But you have to go look for them somewhere, don't you?

A. When it comes to single fingerprints——

Q. Please, Mr. Greene.

A. No. Will you let me explain?

Q. Will you answer it, please?

A. I would have to look for it, naturally, to find it.

Q. If you have only one finger you have to go and look for it? A. Yes. [278]

Q. So it all depends on what you want to look for, is that right?

A. It all depends on what you want to look for, sure. It all depends on the classification.

Q. Please. It all depends on what you want to look for, is that correct? A. Yes, sir.

Mr. Ehrlich: Does Your Honor want me to continue?

The Court: We will recess. You will observe the admonition.

(Recess.) [279]

The Court: You may proceed.

Q. (By Mr. Ehrlich): I understand, Mr. Greene, that you found no prints on this bag, Prosecution's No. 18. A. That is right.

Q. And your reason for that was what, please?

(Testimony of W. Harold Greene.)

A. My reason, there were so many overlapping prints and ridges there that there were none discernible.

Q. In other words, there could or could not have been prints, but you weren't able to discern any?

A. That is right.

Q. And on Exhibit 31—do you have that, sir?

A. Right here.

Q. On Exhibit 31 you did find some prints, did you? A. Yes, sir.

Q. And one print you worked on, is that correct? A. What was that?

Q. And on one print you worked of all the prints that you found on that envelope, 31?

A. I identified—I mean I found two on that particular envelope.

Q. But you only worked on this one?

A. I identified one.

Q. One? A. Yes, sir.

Q. I take it—I don't see it, but I take it it is enclosed [280] in this green——

A. Right there (indicating).

Q. Pardon me? A. Right there.

Q. I am sorry, I don't see it, but it is in this——

A. It was in that area.

Q. It was in this area? A. Yes, sir.

Q. And you say that that print was made by the ninth finger, which you call the ring finger?

A. The ring finger of the left hand.

Q. And it is made, if it is on there, of course, it is made by this finger as I have it (indicating)?

(Testimony of W. Harold Greene.)

A. That is right.

Q. Is that correct, sir? A. That is right.

Q. Explain to me, sir, how that was held up there, how that was held with that finger.

A. It wasn't held with that one finger, it must have been grasped here with the thumb.

Q. Must have? A. Surely.

Q. You don't find any thumb there?

A. The record——

Q. Please, sir, do you find any thumb under that finger?

A. I found presses of other ridges of prints that were overlapping [281] and that were not discernible.

Q. Will you show those to me?

A. They were within that area (indicating).

Q. Right there? A. Right there.

Mr. Karesh: Would you mark that right there?

A. No, I didn't mark it.

Mr. Karesh: I would like you to do it.

Mr. Ehrlich: May I continue with my examination, please?

Mr. Karesh: Pardon me.

Q. (By Mr. Ehrlich): You say now you have a print back here, is that right?

A. I said there were presses of it.

Q. Presses? A. Yes, sir.

Q. Let me ask you, sir, in holding a package like that where would the real hold be, right there, is that right (demonstrating)?

(Testimony of W. Harold Greene.)

A. If you hold it like that the real hold would be like that, but naturally you would hold it like that (demonstrating).

Q. You would hold it this way (demonstrating)?

A. Yes, sir.

Q. And you would seal it, is that the point?

A. That is right.

Q. So that when you said a little while ago that there was [282] something in there, he put it in there and then instead of just sealing it like this with his fingers, instead of just sealing the envelope he went to the trouble of doing this and this and sealing it (demonstrating).

A. I wouldn't know which method he used, I wasn't there.

Q. Would he just pick it up just like this (demonstrating)?

A. That is the way, the ordinary way of handling.

Q. That is the way it was handled?

A. Yes, sir.

Q. It must have been a heavy object, wasn't it?

A. I wouldn't say it was heavy. It was probably heavy for an envelope of that size. It was ordinarily heavier than a letter would be.

Q. If I held—this has some of this stuff in it—

Mr. Karesh: What are you showing him now?

Mr. Ehrlich: I am showing him No. 4 for Identification.

Q. Now, that is the same envelope, isn't it?

(Testimony of W. Harold Greene.)

A. The same envelope.

Q. The same envelope used by the Government, you say? A. Yes.

Q. You saw that? A. Yes.

Q. Now, let's see what would happen if I held it this way, let's see what happens if I hold it that way (demonstrating). So you said there must have been something in there because [283] this indicated to you it was something soft underneath, is that right? A. I said——

Q. Please, sir, didn't you say that?

A. Yes, that is right.

Q. Now, he held it like that (demonstrating)?

A. I don't know how he held it.

Q. Or like this (demonstrating)?

A. That would be—I wouldn't—he held it with his ring finger and the thumb. The weight was on the thumb.

Q. But you don't find any thumb prints?

A. Not a complete thumb print registered.

Q. Please——

Mr. Karesh: Let him answer the question.

Mr. Ehrlich: Just a moment. You don't find any thumb print, did you?

A. I just answered the question.

Q. Will you answer it again?

A. I said an incomplete register of the thumb.

Q. You never said that before?

A. Oh, yes, I did, it is in the record.

(Testimony of W. Harold Greene.)

Q. Pardon me, I am sorry. You wouldn't say that he picked the package up like that, would you (demonstrating)?

A. I wouldn't say he picked the package up like that with four or five fingers on the end.

Q. But you do say that he picked it up that way?

A. Yes.

Q. With those two fingers? A. Yes.

Q. Suppose, Mr. Greene, I were to pick up a package, pick up the envelope like that (demonstrating), or pick it up in any way, this type of envelope—you observe that these envelopes are absolutely the same envelopes, the size?

A. That is right.

Q. Now, my prints on there, how long would they last?

A. I would say your prints on there would last for probably four to five weeks at the most, under ordinary conditions, providing there was no other handling.

Q. Then your statement earlier that they would last two to three to four weeks has stretched now to five weeks? A. Not stretched.

Q. I mean you make it longer?

A. I say four to five weeks.

Q. Then they would disappear?

A. They would automatically be absorbed into the paper, because that paper is not a really hard sized paper.

Q. It is a soft paper?

(Testimony of W. Harold Greene.)

A. It is not a really soft paper, just what we call medium paper.

Q. And it is the oil from the hands that goes into the paper? A. Not the oil.

Q. What is it? [285] A. Perspiration.

Q. Perspiration? A. Yes.

Q. Not the oil? A. Not the oil.

Q. Well, the perspiration would have been gone, wouldn't it, in two, three, four to five weeks?

A. No.

Q. The perspiration would remain?

A. Under ordinary conditions, without handling many times, that is the case.

Q. Isn't it a fact that it is the oil that is covered with this substance that you people use, or powder, whichever you use, that sticks to that oil that gives you the print? A. It isn't oil.

(Pause.)

Mr. Ehrlich: I don't find it right now, I will go to another subject.

Q. Mr. Karesh asked you about transposition of a fingerprint from one piece of paper to another. Had you discussed that with him before?

A. Had I discussed the transposition?

Q. Yes, sir.

A. I told him that it couldn't be done thoroughly and successfully. [286]

Q. It can be done, though, can't it?

(Testimony of W. Harold Greene.)

A. It can be done, but not successfully. You don't do something if you don't do it successfully, in a case like this.

Q. But be that as it may, sir, it can be done, can't it?

A. It could be done, sure it could be done.

Q. Now, taking your photograph chart, here—Your Honor, may I step up?

The Court: You may.

Mr. Ehrlich: This is the latent print and this is the known print, correct, sir?

A. That is right.

Q. I call your attention to No. 12 here, where these complete clear circles—show me those complete clear circles there. Complete, now.

A. The complete innermost recurving ridge is right here.

Q. Just a moment, let's hold it up so these ladies and gentlemen can see it.

A. It is right there (indicating).

Q. Is there one direct line there, or is it all broken?

A. There is one direct line right there.

Q. That is broken, sir.

A. Where is it broken?

Q. That line comes up there, you have two little spots and it is broken.

A. As far as the classification is concerned and our technique [287] that is a complete ridge. Those are pores that you see there.

(Testimony of W. Harold Greene.)

Q. Mr. Greene, I merely inquired of you, if you will, please, to show me the same thing there, here (indicating). Now, this is your good, clear print.

A. That is right.

Q. And this shows them all broken.

A. No.

Q. Your latent print shows them all flat and straight, and in the known print——

A. It doesn't show them broken, at all. These are pores, and from the pressure exerted when the print was rolled——

Q. I am not an expert, sir, I only look at this picture, and I see those lines broken, and I see them over here complete and round, and here they are broken and drop off. You say that is the same?

A. I described that as the innermost recurving ridge of the pattern, the innermost recurving ridge of the pattern.

Q. But this latent fingerprint picture and the known fingerprint picture, just to a layman like myself, doesn't look the same, does it?

A. Well——

Q. Please.

A. It doesn't look the same to you for the simple reason you will get a latent print or a latent fingerprint from his natural touch or something, but still when you take someone's hands [288] and put pressure on them you won't get the natural touch. That is what I explained in the testimony I gave for the whole fourteen characteristics. I explained that to you—— [288a]

(Testimony of W. Harold Greene.)

Q. Yes, will you please not volunteer? You are an expert and I am not.

Mr. Karesh: Mr. Ehrlich, we will concede that, if you keep on saying it.

Q. (By Mr. Ehrlich): The fact remains, Mr. Greene, that these two pictures don't look alike, isn't that right, sir?

A. No, I don't say that they don't look alike, I should say not.

Q. They look alike to you, is that the point?

A. That is what I am testifying to, what they look like to me.

Q. Please. They don't look alike to you, is that correct?

A. They do look alike to me.

Q. Well, there were twelve envelopes, were there not, submitted to you?

A. There were not.

Q. How many were submitted to you?

A. Five.

Q. And what happened to the other four, that is, in so far as your investigation is concerned?

Mr. Karesh: You mean seven, counsel? What happened to the other four? He said he had five.

Mr. Ehrlich: He received five.

Mr. Karesh: There were twelve, that makes seven more.

Q. (By Mr. Ehrlich): Pardon me; maybe I misunderstood you. How many of these did you receive? [289]

A. I received five.

Q. And one of those is Exhibit 31, is that right?

(Testimony of W. Harold Greene.)

A. That is right.

Q. Then you must have had four more?

A. Yes, sir.

Q. Were you able to ascertain who those four belonged to by means of alleged fingerprints?

A. No, I have no identifications on those, although I made comparisons.

Q. Calling your attention to 22, your initials are on that, sir?

A. In red, yes, sir.

Q. Yes.

A. Yes, sir.

Q. And calling your attention to 23, your initials are on that, are they?

A. That is right.

Q. In three places?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And this 22 has the same mark where the print is as has No. 31, doesn't it?

A. Let me see it.

Q. Some damage done there?

A. Something similar. [290]

Q. Yes, but the same nature and exactly in the same place in a straight line, isn't that right?

A. About, yes, that is right.

Q. Have you any idea what caused that?

A. I wouldn't know.

Q. Might it have been some fastening?

A. It may have been a stapling in that.

Q. And in stapling it, he put his hand underneath and between the package in order to put the print on that?

(Testimony of W. Harold Greene.)

A. He put his hand under the staple?

Q. This must have been fastened so this went exactly in the same place again—— A. Yes.

Q. Now, if all of these were fastened together, as apparently they must have been, how did he get his ring finger under here and put his thumb up on there?

A. He didn't buy them fastened together, did he?

Q. How do you know, sir? How do you know that he bought them?

A. If he handled them, he didn't handle them fastened together.

Q. How do you know that, sir?

A. Because it is too plainly seen by an expert.

Q. Do you now include in your qualifications what is plainly seen and what is not plainly seen?

A. I think my eyesight is pretty well.

Q. But all of these were fastened together?

A. I have no concern about whether they were fastened together or not. I didn't see them fastened together. I don't know anything about the fastening of them at all.

Q. And you don't know what was in the envelopes or whether they were or were not fastened together?

A. I know something was in them, but I don't know what it was——

Q. Wonderful. A. I didn't see it.

Q. Then, of course, you don't know whether they were fastened together as is indicated here or not, do you?

(Testimony of W. Harold Greene.)

A. It seems to me as though they were fastened together, but I didn't see it.

Q. It is a fact, isn't it, that you were directed to testify in the manner in which you are testifying? Isn't that right, sir?

A. I didn't get the question.

Mr. Ehrlich: Will you read the question, Mr. Reporter?

(Question read.)

A. No, sir.

Q. (By Mr. Ehrlich): Well, then, why have you been, sir, so anxious to volunteer a lot of information that has nothing to do with this case? Will you explain that? A. I haven't—

Mr. Karesh: Just a moment. I object to the form of that question—

The Court: Yes, sustained. [292]

Mr. Ehrlich: That is all, Your Honor; I have no further questions.

The Court: Any questions from other counsel?

Mr. Kernes: No questions, Your Honor.

Mr. Deasy: No questions.

The Court: Redirect?

Mr. Karesh: That is all.

Mr. Ehrlich: Oh, yes, pardon me, Your Honor, I overlooked a question which was suggested to me here.

Q. I show you, Mr. Greene, Exhibit No. 19, consisting of a number of cellophane packages, cello-

(Testimony of W. Harold Greene.)

phane wrappers, much discolored. Were they submitted to you?

A. No, these were not submitted to me, although I looked them over when I was here in January.

Q. Did you find any fingerprints on those?

A. No, I didn't.

Q. Did you find Mr. Stoppelli's prints on any of these? A. Not any of those.

Q. Just found it on that one envelope?

A. That is right.

Mr. Ehrlich: That is all.

Mr. Dunning: May I ask just one question, Your Honor?

The Court: Yes.

Q. (By Mr. Dunning): Mr. Greene, you made tests for prints on all of the five envelopes submitted to you, is that correct? [293]

A. I didn't make no tests.

Q. That is, you took prints from the envelopes?

A. I examined the envelopes.

Q. For prints?

A. For comparison purposes.

Q. I see. How many fingerprints in all did you find?

A. In all, in all those five envelopes?

Q. Yes.

A. There were three on one, two on another, and one or two on one of the other envelopes.

Q. Were there any fingerprints of Andrew Ingoglia submitted to you for comparison?

(Testimony of W. Harold Greene.)

A. The fingerprint card was submitted to me for comparison.

Q. Did you make any comparison of the other fingerprints you found on the envelopes with those of Andrew Ingoglia? A. I did.

Q. Well, did they match up?

A. No, they were not the same.

Q. They were not the same?

A. They were not the same.

Q. Otherwise, the fingerprints that you referred to belonged to some individuals not known to you?

A. Not known to me, that is right.

Mr. Dunning: That is all. [294]

Redirect Examination

By Mr. Karesh:

Q. And, Mr. Greene, we are still trying to find out who they belong to, aren't we?

A. That is right.

Mr. Karesh: That is all.

The Court: That will be all.

Mr. Karesh: May it please Your Honor, at this time the Government asks to offer in evidence as to all the defendants all the exhibits for identification.

Mr. Ehrlich: To which we object, Your Honor—does Your Honor want to hear argument?

The Court: Yes.

Ladies and gentlemen of the jury, I am going to excuse you now until two o'clock and you will ob-

serve the admonition in the meantime. You may now leave the courtroom.

(The jury retired from the courtroom.)

Mr. Ehrlich: Your Honor, with relation to the exhibits—I understand the motion is just as to the exhibits, is that correct?

The Court: Yes.

Mr. Karesh: At this time, then, I will make a motion as to the testimony.

Mr. Ehrlich: With relation to the exhibits, in so far as the defendant Stoppelli is concerned, we of course object to them.

We start off, of course, with the fact this is a conspiracy. [295] Now all of the testimony in this record, if we believe all of it, take it all as being true, all of the testimony in this record as against the defendant Stoppelli is that his fingerprint was on Exhibit 31. Now, that is all the testimony there is.

Any question about him or his participating here directly or indirectly has been cleared entirely by this testimony of Mrs. LeFevor, who testified that she saw the man who brought in the narcotics and that his name was Tony Sapoli, and she had visited with him. The only evidence against this man at all is a fingerprint which does not establish his conspiracy. A man must either do something directly, he must act, the evidence must show that he has done something, the evidence must show that he was part and parcel of it—and of course that doesn't mean

that he has to sit down and say to someone to do this, as I understand it, but it must show he has done something.

Let us take it for granted, Your Honor, that fingerprint is his and that he put it on the envelope. Does that mean he took the envelope and filled it with narcotics and gave it to the other defendants in this case? Does that mean that he ever handled the narcotics at all in this case? The only thing we have got there is one disconnected thing, a print.

Now, this envelope is the ordinary envelope, the same kind that the Government uses in their exhibits here, absolutely the same. This envelope may have been attached by him, I don't know, [296] but that doesn't indicate for one second his participation in any conspiracy. [296-a]

The Court: My answer to you on that is conspiracies must usually be established by circumstantial evidence, and it seems to me that that is a circumstance sufficient at least to go to the jury to determine the effect of it.

Mr. Ehrlich: May I respond for a moment, Your Honor? Where circumstantial evidence is used, the law is clear that it must be absolutely rationally inconsistent with the man's innocence.

The Court: I shall so instruct the jury. It is a question of fact for the jury to determine.

Mr. Dunning: In behalf of the defendant Ingoglia, I will object to the evidence offered by the Government on the ground that no sufficient foundation has been shown, and the evidence so far is in-

sufficient to connect the defendant Andrew Ingoglia with any of the exhibits that are now being offered in evidence.

The Court: Do any of the other defendants join in the motion?

Mr. Deasy: We will join in the argument. I will submit it without further argument.

Mr. Kernes: On behalf of the defendant McDonough, I join in the motion and submit it without further argument.

The Court: The ruling of the Court is that these exhibits which have been marked for identification are received as against all defendants for all purposes.

Mr. Karesh: May it please Your Honor, with reference to all [297] the testimony taken, we ask that all testimony taken prior to determination of the sale and the possession in the hotel——

The Court: That went in prior to October 31st?

Mr. Karesh: That is during October 31st and prior to that time, be admitted with one exception, and that is the conversation Mr. Souza had with Mr. McDonough about buying a car from Mr. Leeper. That should only go in as against McDonough. All the rest we ask to remain in against all the defendants.

Mr. Dunning: I will ask that the Court renew its ruling at this time with respect to the previous objections interposed on behalf of the defendant Ingoglia with reference to the conversations related by Agent White in connection with his conversation

with the defendant Ballard, and also the testimony of Agent McGuire, which was limited as to Ballard only, and the Court's ruling limiting the conversation to Souza as to the defendant McDonough. In other words, Your Honor, I am asking that Your Honor's rulings on my previous objections on behalf of the defendant Ingoglia, wherein the Court limited that testimony only to the defendants referred to, apply to this offer on the part of Mr. Karesh.

The Court: I am satisfied that in the state of the evidence as it presently appears that all of the testimony which was received for limited purposes should now be extended in so far as that testimony refers to conversations had between witnesses and defendants or concerning activities of defendants prior to [298] the termination of the conspiracy, which was on the 31st of October, with the exception, as counsel has pointed out, of the testimony of the witness Souza, that which he testified concerning the purchase of a car by—who was it, McDonough?

Mr. Karesh: McDonough told Souza he could get a car from Leeper.

The Court: Oh, yes.

Mr. Ehrlich: Your Honor, may I now renew my motion in so far as the evidence is concerned?

The Court: Very well. It will be so understood that the ruling of the Court is that all conversations and testimony concerning conversations in which the defendants or any of them participated in or

any activities and actions of any of the defendants occurring on or prior to October 31st is received in evidence as against all the defendants for all purposes, with the sole exception of the testimony referred to given by the witness Souza, in which he gave testimony concerning the purchase and sale of a Cadillac automobile between Leeper and McDonough, or rather, between Leeper and Souza.

Mr. Deasy: May the record indicate, Your Honor, that we had joined in that objection and Your Honor had overruled our objection?

The Court: It may be so understood.

Mr. Ehrlich: I have one other motion, Your Honor. I desire at this time to move for a mistrial on behalf of the [299] defendant Stoppelli based upon the statements made by the government witness Greene.

The Court: Well, it is unfortunate the statement was made. It was not a complete statement. It was an indication of something. I have instructed the jury to disregard it. I think that is sufficient.

Mr. Ehrlich: Of course, Your Honor, the old trial lawyer's statement that you can't unring a bell is particularly true here. This man could not have said in this trial that he has or has not a record involving this subject. It was clear that Mr. Greene deliberately and voluntarily put that in.

The Court: What do you mean by record? I think the intimation, in so far as it is an intimation, was that this man was under surveillance by narcotic officials.

Mr. Ehrlich: He went further than that. I do not have the exact wording, but as it struck me, and it struck Your Honor equally, with as much force at least, was that he conveyed to the jury the impression that there was something to this, that he knew all about this man, he knew exactly where to go to look, that they had a record on this man and with laymen, Your Honor, that makes a great deal of difference. It would not make any difference to you or to me or to perhaps others who have had experience with the trial of cases, but it does make a great deal of difference in the minds of people sitting on the jury. They can't weigh evidence as you weigh it or as I weigh it. [300] They can't mark out of their minds this thing that this man said. They can't put it away. We could do it. Your Honor could do it because you have tried so many cases. But this man's liberty depends upon what the jury does. That jury has now been told something that he could not get into evidence no matter how he tried.

The Court: He was stopped in his statement before he could complete it and it is not a completed statement. I think as far as the statement went, it is an indication he was under the surveillance of the narcotic bureau.

Mr. Ehrlich: Would Your Honor do me the kindness of reserving your ruling on that until I have that portion written?

The Court: Very well, and I will take it up with you at a quarter to two.

Mr. Karesh: I would like to say in this connection that in a sense counsel invited something that the agent, if he wanted to be unfair, could have answered when he said, "You were looking for——," the last question before the recess.

"You were trying to get him, weren't you?"

The Court: The statement was not made in response to that.

Mr. Ehrlich: No.

Mr. Deasy: Merely as to the conspiracy count, as to the defendants Ballard and Leeper, I urge the same objection. I move for a mistrial, as Mr. Ehrlich has previously urged, because in a conspiracy case if it is harmful to one defendant to show he was a dealer in narcotics, it is equally harmful to the other defendants involved. As to the substantive offenses, I do not believe that will apply.

Mr. Dunning: In behalf of defendant Ingoglia, I will make the same motion.

Mr. Kernes: In behalf of the defendant McDonough, the same motion, Your Honor.

The Court: We will reserve that until the testimony is available in transcript form. We will recess until 1:45 o'clock.

(Thereupon an adjournment was taken to 1:45 o'clock P.M. this date.) [302]

Afternoon Session, June 9, 1949

The Court: Now that all the counsel and defendants are present, I will hear from you further.

Mr. Ehrlich: Your Honor, I have the transcript

written up on that question and answer we were discussing. Mr. Karesh asked the question: "Now, how do you come to that conclusion that the print on the envelope is the print that belongs to John Stoppelli, the defendant?"

"A. We have a national book, every district supervisor in the country in the Narcotic Bureau has a national book published by the Narcotic Bureau of all the major known——"

and Mr. Karesh broke in:

"Just a moment. Pardon me.

"Mr. Ehrlich: All right.

"The Court: Yes.

"Mr. Karesh: Just a moment."

His answer was worse than I recalled it when I was making my motion: "We have a national book, every district supervisor in the country in the Narcotic Bureau has a national book published by the Narcotic Bureau of all the major known—," and, Your Honor, I suggest to you that that is a prejudicial statement. It is damaging to the defendant. It goes so far as to say, in answer to question, "How did you know that this print belonged to Stoppelli?," he says, "Well, we have a book in which all the [303] major known narcotic peddlers are registered or classified."

Mr. Karesh: He just did on "known."

Mr. Ehrlich: I will submit if the Court will read the actual words, that is more than merely hinting.

Mr. Karesh: I do not think so.

Mr. Ehrlich: He needed one word to complete it and that would be "peddlers."

The Court: Well, Mr. Ehrlich, you have got to bridge a gap of all the major known—. Of course you jump to the conclusion the jury is going to say, “all the major known individuals engaging in the narcotic traffic,” or some words to that effect.

Mr. Ehrlich: Well, he says it is printed by the Narcotic Bureau.

The Court: It might be all the major——

Mr. Ehrlich: Certainly it would not be people driving automobiles while drunk.

The Court: It might be anything. Don't you think that we have got to assume that a jury of twelve men and women who are sworn to try the case solely upon the evidence and upon the instructions of the Court that when the Court specifically, definitely instructs that jury to entirely disregard a statement of that kind, having in mind the statement is merely something you have to stretch to a conclusion that is not expressed by the witness—don't we have to assume that a jury is going to perform that solemn obligation in determining the guilt or innocence of a [304] defendant as the law request them to determine it?

Mr. Ehrlich: Your Honor, what you say is correct. We must assume that. But as I facetiously indicated this morning, without intending to be facetious, you can't unring a bell. You can't place your head and brain on the heads of twelve people who haven't the experience that Your Honor or these men who are engaged in this profession have.

These people, if they could weigh evidence as clearly as Your Honor would wish they could, we would have no problems. We would have to make no objections. We would have to make no motions to strike because Your Honor could instruct them that these are the issues, these are the facts, and this is what you are going to determine. But here you have to the layman the worst type of crime. To the layman the narcotic traffic is the worst crime. This is not selling alcohol. This is not running a still. This is not driving while drunk. This is not crawling through a window to burglarize some man's home. This is considered worse by the layman than is the crime of murder, the killing of a human being. They have a horror and fear and a basic scare of this.

Now, when you take that, Judge, and you permit a government witness voluntarily to say, "The reason I know that this is Stoppelli is because we have a book published by the Narcotic Bureau of all the major known—all the major known—" and then Mr. Karesh jumps in, and we start the discussion between counsel and the Court. This is an entirely different thing. Of course, [305] if he had said, "Well, I have some records," and we stopped him, that is one thing. Or, "I had occasion to look up some records," and we stopped him, that is another thing. But this man not only says how he knew it, but he qualifies it by saying every district supervisor's office in the country, every district narcotic supervisor's office has a book published, not by the

FBI, not by the State of California, or whichever state it was, but published by the Narcotic Bureau of all the well known—whatever the words are there, which brought us to the objections. It seems to me that that is going beyond the field of conjecture as to what the jury is going to do in following or not following the instructions of the Court. In other words, we have done here indirectly what the law will not permit us to do directly. We can not say why this man here has a record for narcotic peddling or whatever it is. We can't say that. The law says we can't do it.

The Court: He did not necessarily say, or the inference is not necessarily drawn, that he was referring to the major known dealers in narcotics. The major known sources of narcotics, the major known methods of distribution, sale, and so forth—we do not know what he had in his mind, and I do not think that sort of statement is sufficient to warrant a court in declaring a mistrial. I think the matter has been eradicated in the instruction I have given to this jury, and I am going to assume that the jury is composed of twelve fair and impartial men and [306] women with a conscientious determination to do their duty as they should do it. The motion for a mistrial will not be granted.

Mr. Ehrlich: Thank you, Your Honor, but without disputing it with Your Honor any longer, I was going to add one thing that occurred to me: When you take this statement and add it to the slight, very tenuous, very little, very thin, disconnected evidence

they have against the defendant Stoppelli, it may be the difference between his acquittal and his conviction.

The Court: Well, it is up to that jury to determine whether that is slim, unsubstantial bit of evidence or a substantial, strong evidence. That is up to the jury in considering their verdict under appropriate instructions.

Call the jury.

Mr. Ehrlich: I presume, Mr. Karesh, your case is entirely in now?

Mr. Karesh: Yes, we made our motion and the jury was excluded, about the admissibility of the evidence. When the judge tells the jury what his ruling is, we will rest.

The Court: I have made the ruling. I will just repeat it to them.

Mr. Karesh: They will know this is in evidence as against all the defendants.

Mr. Ehrlich: Your Honor, on behalf of the defendant Stoppelli, I now ask the Court that it direct the jury to return [307] a verdict of not guilty against the defendant Stoppelli.

The Court: Motion is denied.

Mr. Dunning: On behalf of the defendant Andrew Ingoglia, I now move the Court to make an order acquitting this defendant of the charge upon the basis of the insufficiency of the Government's case as it now stands before the Court.

The Court: The motion will be denied.

Mr. Karens: In behalf, if Your Honor please, of

the defendant Patrick McDonough, I make the same motion for acquittal based insufficiency of the evidence in the Government's case.

The Court: Denied.

Mr. Deasy: The same motion is made in behalf of the defendants Leeper and Ballard.

The Court: The motion is denied.

Mr. Ehrlich: The fact that I used the word "direct" instead of "advise," of course, does not make any difference.

The Court: I understand your motion, which will be considered make as such.

(Thereupon the jury returned to the courtroom and the following proceedings were in the presence of the jury:)

The Court: Ladies and gentlemen, there are a number of exhibits which were marked for identification and which were not received in evidence while you were present in the courtroom. All of the exhibits which were so marked have been in your absence admitted into evidence for all purposes. You will therefore [308] consider all of these exhibits to be in evidence. All evidence of the conversations or acts had and occurring on or prior to October 31, 1948, is evidence to be considered by you for all purposes against all the defendants, with the exception of the testimony of the witness Souza about a conversation which he states he had with

the defendant Ballard in reference to the purchase and sale of a Cadillac automobile.

Mr. Karesh: The defendant McDonough, Your Honor.

The Court: Strike the name Ballard. The defendant McDonough, with reference to the purchase and sale of a Cadillac automobile. That testimony is limited and is to be considered by you only as to the defendant McDonough, and to none of the other defendants. Evidence of conversations with or acts done by the defendant after October 31, 1948, is limited to the particular defendant, as I instructed you when such evidence was received. The acts or declarations of the defendant after October 31, 1948, is not evidence against any defendant other than the defendant doing the act or making the declaration. Now, as I understand——

Mr. Karesh: The Government rests.

Mr. Ehrlich: Your Honor, may the defendant Stoppelli enter into a stipulation with the Government through Mr. Karesh that the defendant Stoppelli was arrested on the 23rd day of December, 1948, under Commissioner's warrant No. 11-5177?

Mr. Karesh: If you say that is correct, we stipulate to it. [309]

Mr. Ehrlich: Thank you. So stipulated.

JAMES MARVIN BALLARD

a defendant herein, was called as a witness in his own behalf, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Deasy:

Q. What is your full name, please?

A. James Marvin Ballard.

Q. I am calling your attention to the defendant Stoppelli. I am referring to the gentleman seated in the courtroom to my extreme left inside the aisle. Before October 31, 1948, had you ever known Mr. Stoppelli? A. No, sir.

Q. Before October 31, 1948, had you ever seen Mr. Stoppelli? A. No, sir.

Q. Before October 31, 1948, had you ever heard of Mr. Stoppelli? A. No, sir.

Q. Calling your attention to defendant Leeper, did you know him on October 31, 1948?

A. I did, sir.

Q. Before that time, for how long a period of time had you known him?

A. Approximately six years.

Q. Calling your attention to the defendant McDonough, before October 31, 1948, did you know Mr. McDonough? [310] A. Yes, sir.

Q. And for a period of how long did you know him?

A. Approximately six or eight months.

Q. Before October 31, 1948, did you know a man whom you now know as Andy Ingolia?

A. I did, sir.

(Testimony of James Marvin Ballard.)

Q. Before October 31, 1948, how long had you known him?

A. In the neighborhood of four days.

Q. In the neighborhood of four days, is that correct?

A. That is correct.

Q. During the period of time that you had known Mr. Leeper, had you seen him frequently or infrequently? I will withdraw the question, and say within two weeks preceding October 31, 1948, did you see Mr. Leeper?

A. A few times I saw him on the street.

Q. In that two weeks you saw him a few times, is that correct?

A. That is correct.

Q. Where was it that you generally would see him?

A. Usually in Compton's restaurant, 12th and Broadway, Oakland.

Q. Two weeks before October 31, 1948, about how many times had you seen Mr. McDonough?

A. I didn't get that.

Q. Before October 31, 1948, did you see Mr. McDonough on any occasion?

A. A few occasions at the racetrack. [311]

Q. Would you see him any place else?

A. Occasionally I would see him around Louie's Bar at 12th and Franklin.

Q. Were your meetings with him casual or were they arranged?

A. They were casual.

Q. Calling your attention to the day that you saw Mr. Ingoglia, was he alone or was there someone with him when you saw him?

(Testimony of James Marvin Ballard.)

A. He was with Mr. McDonough.

Q. Where was it that you saw him?

A. At the racetrack.

Q. Approximately how long did you stay with him on that occasion?

A. In the neighborhood of 20 or 30 minutes.

Q. During that period of time did you generally discuss things with him?

A. Horses only.

Q. You discussed the horses, is that correct?

A. That is true, that is correct.

Q. On October 31, 1948, did you see Mr. Ingoglia again? A. I did, sir.

Q. Between the time that you first met him at the racetrack and between the time that you saw him on October 31, 1948, had you seen him on any other occasion?

A. I had spoke to him casually a couple of times on the street.

Q. Did you have any conversations with him or was it just casual? [312]

A. No, sir.

Q. Between the time that you first met Mr. Ingoglia at the race track and the time you met him on October 31, 1948, did you have any conversation with Mr. Ingoglia in reference to betting on horse races in which the name of Mr. Ingoglia figured?

A. I did, sir.

Q. Did you have one conversation or more than one conversation?

(Testimony of James Marvin Ballard.)

A. Two or three, to the best of my recollection.

Q. Can you tell me the location of any of them?

A. Well, one was in Compton's restaurant.

Q. About how long was that before October 31st?

A. That was approximately two days.

Q. Was there anyone else present at that conversation other than you and Mr. McDonough?

A. No, sir.

Q. As vividly as you can recall, will you tell us what the substance of that conversation was?

A. Well, we were broke—we were not broke, but we were not too well financially fixed. When Mr. McDonough told me Mr. Ingolia would like to bet on horses. Mr. McDonough knew Mr. Leeper slightly and knew Mr. Leeper had a lot of information from San Francisco bookmakers on horses. So I talked to him about seeing if we couldn't get Mr. Ingolia to make a bet on a horse and bet something for us.

Q. Did you know what Mr. Leeper's occupation was primarily? [313]

A. I did, sir.

Q. What was that?

A. He was a gambler and he was a dealer in the gold business.

Q. Did you have occasion to meet Mr. Leeper on October 31, 1948?

A. I did, sir.

Q. Where was it that you met him?

A. In Compton's restaurant.

(Testimony of James Marvin Ballard.)

Q. At that time did you have any conversation with Mr. Leeper? A. I did, sir.

Q. What did that concern?

A. It concerned a job.

Q. What was said by you and what was said by Mr. Leeper in that regard?

A. Previously Mr. Leeper had promised to take me to the Southern Pacific Yards, where he knew some people, to see if he could secure me a job on the railroad, and on October 31st, when I met him, which was Sunday, I asked him to take me down to see if he could do me any good in helping to secure me a job on the railroad. He told me he couldn't because the generator on his car wasn't working and the battery was dead.

Q. Was anything further said at that time?

A. No, sir. We walked out of Compton's restaurant, walked over to the garage where he keeps his car, and he asked the fellow who ran the garage to charge the battery on the car.

Q. I am calling your attention to Government's Exhibit No. 34, [314] a Cadillac automobile, license 17-K-120, and I will ask you if you will just look at that, please. Now, when you refer to Mr. Leeper's car, are you referring to that car?

A. That is it, sir.

Q. That is the car that you have in mind, is that correct? A. Yes, sir.

Q. After the battery was charged did you and Mr. Leeper go any place in his automobile?

(Testimony of James Marvin Ballard.)

A. We drove to the Clay-Ten Hotel and parked right on the corner at Tenth and Clay.

Q. Now, after you parked the car, did you attempt to do anything to fix the car?

A. I did, sir. I pulled the hood on Mr. Leeper's car and asked him if he had a screw driver, which he had in the automobile. The generator regulator was stuck and the juice wasn't going through the car. So I took the cap off the regulator, jiggled it a few times with a screw driver. I thought they needed filing. I asked Mr. Leeper if he had a fingernail file. He said he didn't have there. Mr. Leeper went upstairs in his room, opened the window. He didn't have a fingernail file, but he had a couple of emery boards, and he threw them out to me.

Q. When you refer to his room, you are referring to Room 306 in the Clay-Ten Hotel, is that correct?

A. That is correct.

Q. After working on the car, did you have occasion to go up [315] to Mr. Leeper's room?

A. I did, sir. I went up to Mr. Leeper's room to wash the grease off my hands.

Q. When you arrived there was Mr. Leeper alone or was there someone with him?

A. He was alone.

(Testimony of James Marvin Ballard.)

Q. Did you have any conversation with him at that time? A. I did, sir.

Q. Did you have any conversation with him at that time in regard to the job? A. Yes, sir.

Q. Tell us what was said about that.

A. He told me he would rather not drive the car, being as we couldn't fix it, to the Seventh and Pine Street to see if he could get me a job, because he was afraid the battery would go dead. In the meantime I brought up the subject that I would like to get a man to bet on a horse if he could get the horse, and the man might make a bet for us.

Q. What did Mr. Leeper say in that regard?

A. He said he could get a horse if I could get the man to bet on it.

Q. Was anything said then about your using Mr. Leeper's car?

A. Mr. Leeper asked me if I knew a place—it was a Sunday and he asked me if I knew a place where I knew he could get the regulator fixed on his car. I told him I didn't but I would [316] try to find one.

Q. Was there anything said about a meeting between this man to whom you referred and Mr. Leeper?

A. Mr. Leeper told me if I saw the man, to bring the man to his hotel and he would talk it over about what the bet would be.

Q. Then just tell us what you did.

(Testimony of James Marvin Ballard.)

A. I went downstairs. Mr. Leeper's car was parked at the corner of Tenth and Clay, where it had originally stopped. I got in his car, I drove up to Twelfth Street, and started down Twelfth Street, and I got one block past Broadway and Mr. McDonough was standing on the corner.

Q. Let me ask you at this point, the man that you were going to meet in reference to the bet on the horse, that was Mr. Ingoglia?

A. It was, sir.

Q. Did you know where Mr. Ingoglia lived?

A. I did not, sir.

Q. Then you met Mr. McDonough, is that correct?

A. That is correct.

Q. Did you have any conversation with Mr. McDonough?

A. I did, sir.

Q. Was there anyone else present other than you and Mr. McDonough?

A. There was not.

Q. Tell us as nearly as you can recall what was said.

A. I asked Mr. McDonough if he knew where Mr. Ingoglia lived, and he said he did. So I asked him to show me where he lived, [317] that I was going to try to get him to bet on a horse for Mr. Leeper and I. We drove out past the lake to Second Avenue, East Twelfth Street, and Mr. Ingoglia was standing on the corner walking along the street. He stopped and picked Mr. Ingoglia up and talked to him about making the bet on a horse, and he agreed to make a bet on the horse if he could secure some good information.

(Testimony of James Marvin Ballard.)

Q. From the Clay-Ten Hotel to Second Avenue and East Twelfth Street, approximately how far is that?

A. It is approximately, I would say a mile and a half.

Q. Did I understand you to say that you drove out Twelfth Street? A. That is correct, sir.

Q. From Clay and Twelfth out to Second Avenue and Twelfth, is that right?

A. I drove from Tenth and Clay to Second Avenue and Twelfth.

Q. Did you subsequently drive Mr. Ingoglia back to the vicinity of the Clay-Ten Hotel?

A. What was that?

Q. Afterwards, after you met Mr. Ingoglia, did you drive him down to near the Clay-Ten Hotel?

A. I did, sir.

Q. Who was with you when you did that?

A. Mr. McDonough.

Q. Just tell us as nearly as you can recall what you did after you picked Mr. Ingoglia up? [318]

A. After Mr. Ingoglia agreed to make a bet on the horse if we could secure some good information, we drove down Tenth Street and came directly to the Clay-Ten Hotel, parked nearly directly in the white zone in front of the hotel. Mr. Norris had something he wanted to do, so I told him to wait for me just a few minutes and I would take Mr. Ingoglia up, introduce him to Mr. Leeper, and I would be back. And I also told Mr. Ingoglia

(Testimony of James Marvin Ballard.)

I would return for him if I could get the car fixed.

Q. What happened after that?

A. We arrived in front of the Clay-Ten Hotel. I got out on the left side with the driver which was driving the car. Mr. McDonough was in the middle, as I recall, and Mr. Ingoglia was on the outside. Mr. Ingoglia and I got out, walked in the hotel, walked up the stairs, the third floor, started down to the end of the hall, where Room 306 is, and on the way toward Mr. Leeper's room I met someone in the hallway. Just before we arrived in Mr. Leeper's room Mr. White came charging out with a gun in his hand and stuck the gun into both of us, and he said, "I am a Federal Agent. Get in there." He forced us at the point of a gun into Mr. Leeper's room and made us sit on the floor.

Q. After that you were taken to jail, is that correct?

A. That is correct, sir, about twenty-five minutes later.

Q. While you were in the Oakland Jail did you have a conversation with Mr. White? [319]

A. I did, sir.

Q. Who was present at that conversation?

A. I think it was Mr. McGuire, and Mr. White.

Q. I am going to ask you if at that conversation you told either Mr. White or Mr. McGuire that you knew Mr. Ingoglia had narcotics?

A. I did not, sir.

(Testimony of James Marvin Ballard.)

Q. I am going to ask you if at that conversation you ever told either Mr. McGuire or Mr. White that Mr. McDonough had told you that Mr. Ingoglia handled narcotics? A. I did not, sir.

Q. I am going to ask you if, in that conversation, in substance or effect, you asked them if they would give you a break, or "What is there in it for me?"

A. I did not, sir.

Q. Will you state, as nearly as you can recall now, what the conversation was?

A. The next day in the Oakland City Jail—I went to jail Sunday afternoon. The next day Mr. White and Mr. McGuire came over, took me out of the main tank, took me into a small room, and was questioning me about what I knew about Mr. Ingoglia, Mr. McDonough and Mr. Leeper. I related the whole story where I met Mr. Ingoglia and all about it. And Mr. White said, "I guess you know what kind of a jam you are in."

I said, "I haven't done anything." I said, "I'm not [320] worried about it, too much."

There was no mention on my part of making any kind of deal with Mr. White.

Q. After that time were you taken to Mr. Karresh's office over here in the Federal Building, the Post Office Building, here?

A. The following Wednesday a United States Marshal came to the Oakland City Jail and brought me out of the Oakland City Jail and brought me to the Federal Building here in San Francisco. I

(Testimony of James Marvin Ballard.)

first was taken downstairs and had to wait by the fingerprint bureau a while, and then I was brought upstairs to Mr. Karesh's office.

Q. You were introduced to Mr. Karesh?

A. I was introduced to Mr. Karesh by Mr. McGuire.

Q. You had a conversation in that office, is that correct? A. There was, sir.

Q. Let me ask you this, who was present at that conversation?

A. Well, when we first came in there was another fellow sitting there. I don't know who he is. He was sitting behind the desk. He later left. He and Mr. Karesh were talking about betting on football pools at the outset. I think Agent Bertin was present in and out.

Q. At that time did you tell Mr. Karesh and Mr. McGuire, or either of them, that you asked them, "What is in it for me?"

A. I did not, sir.

Q. At that time you did have a conversation with Mr. Karesh, [321]

A. I did, sir. Mr. Karesh sent someone outside the room, secured some papers, and brought them back. He says, "Do you know anything about this deal?"

He said, "You tell me what you know and I will recommend that you receive probation."

He brought the papers back and laid them in front of me on the desk and told me the papers

(Testimony of James Marvin Ballard.)

showed where some fellow had been picked up on the street for peddling narcotics and he turned State's evidence and he received probation. And I told him I didn't want anything to do with it because I didn't have anything to do with the case and I wasn't worried.

Q. Can you recall any more of the conversation?

A. I recall bits of it.

Q. That is substantially what you recall now of the conversation you had, is that correct?

A. At one stage of it Mr. Karesh said that he would try to see that I got 25 years.

Q. What did you say to that?

A. I told him if he wanted to convict an innocent man, it would be upon his conscience, not mine.

Mr. Deasy: That is all.

Cross-Examination

By Mr. Karesh:

Q. Was Mr. McGuire present when I told you you would get 25 years?

A. I don't remember, sir. [322]

Q. You say you saw a man sitting at my desk and I was talking about betting on a football pool?

A. I think he is sitting in the courtroom right now, if I am not mistaken.

Q. What is the man?

A. I don't know. He looks like he may be your brother.

(Testimony of James Marvin Ballard.)

Q. Which one?

A. The fellow with the red tie and the white shirt.

Q. That one there (indicating a spectator)?

A. The one between those two.

The Spectator: Me?

Q. (By Mr. Karesh): The fellow who said "Me"? A. That looks like the man.

Q. He was sitting at my desk when we were talking about a football pool?

A. I wouldn't swear that that is the man.

Q. It looks like him?

A. Yes, considerably.

Q. He was sitting at my desk?

A. I don't know whether it was your desk. He was sitting at a desk.

Q. Will you tell me the conversation about the football pool?

A. I don't remember the exact circumstances about the football pool, but there was some conversation about some man winning so much on a football parley of some kind. [323]

Q. Did I use the word "parel"?

A. I don't know if you did, or not, but that was the substance of the conversation.

Q. Then you listened in on that conversation?

A. I must have. I was standing right in front of you, sir.

Q. Going back to this mysterious man in the corridor of the third floor of the Clay-Ten Hotel, will you describe that mysterious man to us?

(Testimony of James Marvin Ballard.)

A. I didn't pay any attention to him, sir. I don't usually pay attention to people that I meet by chance.

Q. How far down the hall was this man when you passed him in the hall?

A. He wasn't too far away from Mr. Leeper's door, sir.

Q. Would you say half way down the corridor to the elevator?

A. He was not quite half way, sir.

Q. You had seen him not quite half way?

A. He was closer to Mr. Leeper's room than he was to the elevator.

Q. Did he appear to be running, or just walking only? A. He was walking only.

Q. Did you tell that to me in my room in Mr. McGuire's presence, that you saw a man in the hall? A. I did not, sir.

Q. Did you tell that to the agents that day, October 31, 1948?

A. They didn't ask me, sir. [324]

Q. With reference to the automobile, you say that you got your hands dirty and that was why you went upstairs to wash your hands?

A. I did, sir.

Q. Where had you been before you started tinkering with the automobile?

A. I had just recently gotten out of bed.

Q. Didn't you say that before that time you had been in a garage and you had had the battery charged?

(Testimony of James Marvin Ballard.)

A. That was in between the time I got out of bed and the time we arrived at Tenth and Clay.

Q. So as I gather it, you got out of bed, took the car in the garage, and they charged the battery, and you drove the car to vicinity of Tenth and Clay Streets, and then Mr. Leeper went upstairs and he threw you down—what did he throw you down from upstairs?

A. An emery board.

Q. With the emery board you started working on what? A. The generator regulator.

Q. Why didn't you have the generator worked on or looked at when you had it in the garage?

A. The garage was only a storage garage.

Q. Storage for what?

A. Storage for automobiles.

Q. And yet they charge a battery? [325]

A. They do.

Q. Didn't you ask them to look at the generator?

A. I did, sir.

Q. Did they look at it?

A. No, sir. The man was only an attendant that puts gasoline in cars. I guess they must charge batteries; they have a charging battery machine.

Q. Did you pay for it?

A. I think Mr. Leeper had it put on his bill. He might have paid, though. I don't remember exactly.

Q. Do you know the name of the man in the garage? A. No, sir.

(Testimony of James Marvin Ballard.)

Q. Can you describe him to us?

A. He was a colored fellow.

Q. A colored fellow? A. That is right.

Q. And you say they were unable to work on the generator? A. That is correct.

Q. And yet they charged the battery for you?

A. That is correct, sir.

Q. The only reason you went up to the hotel the second time, or was it the first time, was to wash your hands?

A. I was only up to the hotel twice. The first time I washed my hands; the second time I came back with Mr. Ingolia.

Q. You are sure you went up there to wash your hands? [326]

A. That is correct, sir. I had grease all over my hands from taking off the regulator box.

Q. Did you stop in any other rooms in that hotel before you got to Room 306?

A. I don't know, sir. I don't know anyone else in the hotel.

Q. Your testimony positively is you went upstairs so that you could wash your hands?

A. That is correct, sir. [326-a]

Q. You heard Agent White and Agent McGuire testify that you had had a conversation with them in the jail the day after the arrest. You told them something about the narcotics. Do you deny that that conversation took place?

(Testimony of James Marvin Ballard.)

A. I do, sir.

Q. The conversation that Mr. McGuire related took place at my office, do you deny that that took place?

A. There was a conversation in your office.

Q. You deny that I went to the adjacent room and went through the experiment of putting the package through the door? Do you deny that that took place?

A. What you did in the next room, sir, I don't know.

Q. Didn't you see me in that same room in your presence go to the door and stick my hand through the door, so putting a package in in your presence?

A. I did, sir.

Q. Didn't we time how long it would take?

A. If you did, I guess you were performing an experiment. I didn't time it.

Q. After I said, "You want us to believe you had nothing to do with putting the package through the door?" Didn't you say, "It is ridiculous"?

A. I didn't say, "It is ridiculous."

Q. You didn't tell that to me or McGuire in my presence?

A. I never mentioned the word "ridiculous."

Q. Did you have any discussions with me about dismissing the case against you?

A. I did not, sir. You were the one who brought up the discussion.

Q. Didn't you say to me if I would drop the case

(Testimony of James Marvin Ballard.)

completely against you that you would tell the story? A. I did not.

Q. And didn't I refuse, in the presence of Mr. McGuire, to dismiss the case, and you said, "The hell with it. Let me get out of here."?

A. You didn't refuse to dismiss the case because I didn't ask you to dismiss it.

Mr. Karesh: That is all.

Mr. Dunning: No questions.

Mr. Deasy: No further questions.

Mr. Kernes: No further questions.

The Court: Is that all the evidence of the defendant Ballard? Have you any further witnesses for the defendant Ballard?

Mr. Deasy: No, the defendant Ballard rests.

Mr. Kernes: Call Mr. McDonough to the stand, if Your Honor please.

PATRICK JOHN McDONOUGH

was called as a witness in his own behalf and upon being duly sworn, testified as follows: [328]

Direct Examination

By Mr. Kernes:

Q. Would you state to the Court and the jury your full name, please?

A. Patrick John McDonough.

Q. Mr. McDonough, you are defendant in this action, are you not? A. I am.

Q. I am going to ask you if prior to the 31st

(Testimony of John Patrick McDonough.)

day of October 1948 you ever knew a co-defendant, John Stoppelli, the gentleman sitting on the extreme right? A. No, sir.

Q. Have you ever heard of Mr. John Stoppelli?

A. No, sir.

Q. Had you ever seen John Stoppelli?

A. No, sir.

Q. Did you have any knowledge of John Stoppelli? A. No, sir.

Q. Did you know the defendant Leeper, Raymond Leeper? A. Yes, sir.

Q. Did you know the defendant Ballard?

A. Yes, sir.

Q. Mr. McDonough, prior to October 31, 1948, how long had you known the defendant Ballard?

A. About eight months.

Q. Prior to that date, that is, October 31, 1948, how long had you known the defendant Leeper?

A. I would say about three months.

Q. I will ask you this, Mr. McDonough: Did you know the defendant Ingoglia, that is, Andrew Ingoglia? A. Yes, sir.

Q. Prior to October 31st, 1948, how long had you known the defendant Andrew Ingoglia?

A. I would say about ten months.

Q. About ten months? A. Yes, sir.

Q. Did you know prior to October 31, 1948, what the defendant Ingoglia's occupation was?

A. Card game.

Q. Where did you meet the defendant Ingoglia?

(Testimony of John Patrick McDonough.)

A. In a social club on Eddy Street in San Francisco.

Q. By social club you mean what?

A. Card room.

Q. Calling your attention to a few days prior to October 31, 1948, did you have occasion to be at the race track? A. Yes, sir.

Q. What track is that?

A. That is Golden Gate Field.

Q. In Albany, California? A. Albany.

Q. Did you have occasion at that time and place to see the defendant Ballard? [330]

A. Yes, sir.

Q. Did you have occasion at that time and place also to see the defendant Ingoglia?

A. I don't get you.

Q. Did you at that same time and place see the defendant Ingoglia? A. Yes, sir.

Q. Was there any conversation had between you and the defendant Ballard and the defendant Ingoglia at that time and place?

A. Yes, sir, about the horses, the way they were running.

Q. Will you just give me the substance of what that conversation was at that time and place?

A. All we talked about was the horses, how we were betting, how we were losing, how we were winning.

Q. Mr. McDonough, from that time until the

(Testimony of John Patrick McDonough.)

31st day of October 1948, did you see the defendant Ingoglia between that time? A. Yes, sir.

Q. Where did you see him next?

A. I seen him on the street, talked to him on the street.

Q. I will call your attention, Mr. McDonough, to Sunday, October 31, 1948, and ask you if during that day you saw the defendant Ballard.

A. Yes, sir.

Q. Where did you see him?

A. I was standing on the corner of Twelfth and Franklin Streets [331] when he drove up in an automobile.

Q. Did you have any conversation with Mr. Ballard at that time?

A. Yes, he stopped the car and he said——

Q. Just answer the question, Mr. McDonough. Could you give us now what you said and what he said as best as you can recall?

A. He stopped the car and said, "Do you know where I can find Ingoglia?"

I said I did. "He lives at the Lakeside Hotel."

And he told me, he said, "I am going to try to get a horse to bet on. Maybe he would bet some money on a horse."

Q. Was there anything else said by Ballard to you or by you to Mr. Ballard?

A. No, he said, "We'll take a ride and show him."

Q. Did you drive with Mr. Ballard?

(Testimony of John Patrick McDonough.)

A. Yes, I did.

Q. Where did you go?

A. Went to the Lakeside Hotel on Second Avenue.

Q. Did you meet Mr. Ingoglia there?

A. Yes, he was walking down the street. He happened to drive up.

Q. Was there any conversation had at that time?

A. Yes, Ballard told him he knew a fellow who had a good horse. Mr. Ingoglia said if the horse is good he might bet some money on it.

Q. Then what occurred?

A. Ballard said, "If you would come along, you could meet the [332] man who had the horse."

Mr. Ingoglia got in the car and rode back toward town.

Q. Ultimately did that car arrive in the vicinity of the Clay-Ten Hotel, that is, Tenth and Clay Street in Oakland? A. Yes.

Q. Was there any conversation as that car stopped at Tenth and Clay Streets between you, the defendant Ballard or the defendant Ingoglia?

A. Well, Ballard told me to wait, he would be down there in about five minutes.

Q. What occurred then?

A. Well, I waited.

Q. Did you see anything unusual?

A. No, sir.

Q. Did you leave that car? A. Yes, sir.

Q. Why did you leave that car?

(Testimony of John Patrick McDonough.)

A. I told Mr. Ballard I had an appointment in about 20 minutes to a half hour. I had to meet somebody. That is when he told me, "Wait five minutes and I will drive you back."

I waited 15 or 20 minutes. He didn't come, so I had to meet the party I had the appointment with. I left the car and walked back uptown.

Q. While you were sitting in that automobile, did you have occasion to see a police car drive up to the Clay-Ten Hotel? [333] A. Yes, sir.

Q. Did you have occasion perhaps a little later to see another police car drive up in the vicinity?

A. Yes, sir.

Q. At the time that those police cars drove up in the vicinity of the Clay-Ten Hotel, where were you? Were you in the automobile?

A. I was sitting in the automobile in the front seat.

Q. With relation to the time the police cars drove up to the vicinity of the Clay-Ten Hotel, how long a period elapsed before you left that automobile?

A. Well, one car came first and then another car came, and it was about 20 minutes after he went upstairs, I got out of the car, walked to the corner, lit a cigarette, and I figured, "I'm not going to wait for him," so I just walked back uptown.

Q. While you were waiting at that corner—what corner do you mean, sir? I will withdraw that. I will show you now United States Exhibit 13. You

(Testimony of John Patrick McDonough.)

say you walked to the corner. Was it the corner of Tenth Street or the corner of Eleventh Street?

A. This corner right here, Eleventh Street.

Q. That would be Eleventh Street?

A. Yes.

Q. Did you have occasion to walk around that corner?

A. Yes, I had to walk around the corner to go uptown.

Q. Did you ever look up or down Clay Street?

A. No, I took a few steps and glanced back to see if they were coming out.

Q. By they, whom do you mean, Mr. McDonough?

A. Mr. Ballard and Mr. Ingolia.

Mr. Kernes: I believe that is all.

Cross-Examination

By Mr. Karesh:

Q. Do you recall having a conversation with Agent Bertin of the Bureau of Narcotics?

A. No, sir.

Q. Don't you remember when you were being fingerprinted that he had a conversation with you in the marshal's office on November 15, 1948?

A. No, sir.

Q. Don't you remember Mr. Bertin asked you whether or not you knew any of the people and you said the only one you knew was Ballard?

A. No, sir.

(Testimony of John Patrick McDonough.)

Q. I will call your attention to page 180 of the transcript, which is the questions and answers of Mr. Bertin, and the answer is, speaking of your conversation with him, "that he didn't know any of these people that were arrested except Ballard."

"Q. He said he didn't know any of these people you had arrested except Ballard.

"A. Ballard."

Did you tell Mr. Bertin that? [335]

A. Mr. Bertin didn't ask me no questions at all.

Q. Are you positive of that?

A. Yes, sir.

Q. Do you recall seeing Mr. Bertin, when the information was being placed on the back of your fingerprint cards?

A. Mr. Bertin was the one, I think, who fingerprinted me in the presence of ten or fifteen people.

Q. And he said absolutely nothing to you?

A. No, sir, I don't recall him saying anything.

Q. And you are positive you didn't tell him the only person you knew that had been arrested was Ballard?

A. I didn't tell him nothing, sir.

Q. All right. Who was this appointment you made with on Sunday, October 31st, 1948, that you had to get to? A. It was with a girl.

Q. What is her name?

A. Well, I met the girl at a dance.

Q. Do you know what her name is?

A. Usually I don't know—I don't know her last name. Her first name was Mary.

(Testimony of John Patrick McDonough.)

Q. How long before October 31st had you met her? A. Oh, about a week.

Q. When did you make the appointment for that Sunday? A. What is that?

Q. What time of day was the appointment for on that Sunday? [336]

A. I asked her the day before. I told her I would meet her on the corner the next day.

Q. What corner were you going to meet her on the next day?

A. Where Mr. Ballard picked me up at Twelfth and Franklyn Street.

Q. What time were you supposed to meet?

A. Between 5:00 and 6:00.

Q. 5:00 and 6:00? A. Yes.

Q. What time was it that you were at the hotel, outside of the car?

A. Well, I don't know. About—I think about 4:30 or so.

Q. Are you sure it wasn't before 4:00 o'clock?

A. I can't recollect the exact time.

Q. Does it take you an hour to walk from the Clay-Ten Hotel at Twelfth and Franklin? You had to go home to change your clothes?

A. No, I didn't go home.

Q. Why did you need an hour to get there?

A. I didn't want to miss her.

Q. What is that?

A. I didn't want to miss her.

Q. You didn't want to miss her? You are sure

(Testimony of John Patrick McDonough.)

you had an appointment? A. Oh, yes. [337]

Q. Will you describe this girl for us?

A. Weight and everything?

Q. As best you can, give us a description.

A. She is about five foot three, 115 pounds, black hair, she is Italian.

Q. She is what? A. Italian.

Q. Did you meet her at 5:30 that day?

A. No, sir.

Q. What happened?

A. She stood me up.

Q. Have you seen her since October 31st, 1948?

A. No, sir.

Q. You have not seen her since?

A. No, sir.

Q. And you say she stood you up?

A. Yes, sir.

Q. Do you remember Agent Grady testified that the police cars rolled up, you got out of the car, and went around the corner from the front entrance of the hotel, backed up, and then looked around again several times and backed up? Do you remember him testifying something to that effect?

A. Yes, sir.

Q. Did you do that, Mr. McDonough?

A. No, sir, I might have glanced back once or twice to see if [338] they were coming and that was it.

Q. Isn't it true, Mr. McDonough, when both of those police cars came up, the reason you ran away

(Testimony of John Patrick McDonough.)

or went away was because you knew something had gone wrong with the narcotic deal and you had better get yourself away from that hotel, isn't that true?

A. No, sir, I had no suspicions of any sort.

Q. Why didn't you go up to the hotel? You had an hour before you were going to meet this girl. Why didn't you go to the hotel, call Room 306 and tell them you were leaving?

A. Why should I?

Q. You left the keys in the car, didn't you?

A. It wasn't my automobile. I didn't drive it.

Q. You just left the keys in your friend's car, or Mr. Leeper's car, and went away?

A. Yes, I got out of the car and walked uptown.

Q. You didn't think enough of Mr. Leeper to go to the hotel and take the keys up to him so he would have those keys for his car, is that right?

A. I didn't notice the keys in the car.

Q. You moved into the driver's seat originally when Ingoglia and Ballard got out of the car, didn't you?

A. Yes, I think I did.

Q. And you didn't see any keys?

A. I wasn't looking for any keys.

Q. You are sure when you got out of the car you didn't see any [339] keys?

A. No, sir, I didn't even look.

Q. Where were you from October 31st, 1948, until you surrendered to the United States Commissioner in Oakland, I think it was on November 5. Where were you all that time?

(Testimony of John Patrick McDonough.)

A. Well, sir, the first time I knew was when I read the papers.

Q. When did you read it in the papers that there was a warrant for your arrest?

A. I think it was the following night, Monday night.

Q. Why didn't you surrender yourself to the authorities when you knew there was a warrant for your arrest?

A. Well, I was scared. I didn't do nothing, so I contacted an attorney.

Q. Whom did you contact?

A. Mr. Sperbeck.

Q. Then what happened?

A. He told me—I said, “I don't know if they are looking for me or not,” because my name wasn't in the paper.

Q. Wasn't the name McDonough——

A. No, I believe it was Norris.

Q. Why did you contact the lawyer if you didn't know they were looking for you?

A. The pictures were in the newspapers. My name was mentioned in the papers that I am involved. I figured I had better contact an attorney.

Q. You contacted a lawyer on what day?

A. I think it was Tuesday morning.

Q. How long after did you surrender yourself into custody?

A. He told me he would find out the details of what happened. And so arrangements were made for me to surrender myself on Saturday.

(Testimony of John Patrick McDonough.)

Q. You did not think you should have gone into the office of the Bureau of Narcotics and tell them you had nothing to do with this case, immediately upon reading your name in the paper?

A. I thought best to notify an attorney.

Q. Who did you say that attorney was?

A. Mr. Isaac Sperbeck.

Q. Sperbeck? A. Yes.

Q. Not Mr. Kernes sitting here?

A. No, sir.

Q. What names do you have? You have more than one name?

A. I don't. Some people started calling me another name.

Q. What is your real name?

A. Patrick John McDonough.

Q. What other name do you go by?

A. I don't go by——

Q. Didn't you go by the name of Red Norris?

A. Yes, but I didn't tell anybody it was my name. People just gave me the name. [341]

Q. When they gave you the name you accepted it?

A. No, sir, when people kept calling you that name, everybody else accepts that as your true name.

Q. In other words, as many people know you by the name of Norris as know you by the name of McDonough?

(Testimony of John Patrick McDonough.)

A. No, about 90 per cent more know me by Red Norris than know me by my right name.

Q. You stayed at Mr. Souza's house, didn't you?

A. Yes, sir.

Q. You didn't stay there from October 31st, 1948 up to November 5th, 1948, did you?

A. No, sir.

Q. Isn't that the reason you didn't stay, was because you knew the officers would be looking for you to pick you up for this offense?

A. I seen my name in the paper and I was scared. I didn't have nothing to do with anything. I figured the best I could do would be to contact an attorney.

Q. Tell me where did you sleep the night of October 31st?

A. I didn't sleep. I walked the streets.

Q. October 31st?

A. Oh, I am sorry. October 31st?

Q. Yes, that Sunday night.

A. Sunday night?

Q. Yes. Why did you walk the streets? [342]

A. I had nowhere to go. I was scared.

Q. But the warrant was not issued until the next day, Monday, and yet you were scared on Sunday night? A. Monday night, yes.

Q. Where did you sleep Sunday night?

A. Oh, Sunday night, I think I went to my home—no, I believe I stayed at a friend's house. That was Sunday night, yes.

(Testimony of John Patrick McDonough.)

Q. What is his name?

A. Well, a girl's house.

Q. Where does she stay?

A. She had a room in a hotel.

Q. What hotel? A. Touraine.

Q. And what is her name?

A. The name is Helen, as far as I am concerned.
I met the girl through a friend of mine.

Q. You mean you met a girl named Helen through a friend of yours, you do not know her last name, you stayed there Sunday night, October 31st, 1948?

A. That is right, sir. I know many people by their first names. I never can tell you their last name.

Q. Do you know what room you slept in in the Touraine Hotel?

A. No, sir. I met her in the bar that night and we both went to her room.

Q. You didn't go back to where you resided yourself on October [343] 31st? A. No.

Q. And you were not in your home up to the time you surrendered on November 5th?

A. The next night when I came back I bought the newspapers.

Q. And then you decided you had better keep under cover? A. No, I contacted an attorney.

Q. Didn't the attorney tell you to surrender yourself?

(Testimony of John Patrick McDonough.)

A. Yes, he would find out full details for me and then make arrangements for me to surrender myself.

Q. Where were you all these nights from November 1st to November 5th?

Mr. Kernes: If your Honor please, I am going to object to that. It is incompetent, irrelevant and immaterial. The witness has answered that he contacted an attorney.

The Court: It is beyond the scope of the direct examination. Sustained.

Q. (By Mr. Karesh): What is your occupation? A. Salesman.

Q. For whom?

A. My brother-in-law. He was in the household utensil business in San Francisco.

Q. Was that on October 31st?

A. No, sir, about four months prior to that we went broke.

Q. How have you been keeping yourself? [344]

A. Well, I saved a little money of my own by myself, and I am on a government pension.

Q. Did you say you went over to the hotel because it would be a bet on the horse?

A. No, sir. When he picked me up——

Q. Yes?

A. Mr. Ballard asked me where Mr. Ingoglia lived and I said I would get out. He said he would only be five minutes and "I will drive you back up."

(Testimony of John Patrick McDonough.)

Q. Weren't you interested in getting your cut on the horse if it won? A. What was that?

Q. Weren't you interested in getting your cut on the horse if it won, the horse the bet was going to be laid on?

A. I assumed I would get something.

Q. And yet you did not go up to the hotel room?

A. Well, no. Mr. Ballard told me to stay downstairs and he would be down in five minutes.

Q. Wasn't it worth sitting down there if you thought you would get some money?

A. No, I would trust Mr. Ballard.

Q. Do you trust Mr. Ingoglia?

A. Yes, sir, as far as that.

Q. You know Mr. Leeper, of course?

A. Yes, sir. [345]

Q. You have spoken to him over the phone and he has spoken to you over the phone?

A. No, sir.

Q. He has never called you at that Lockhaven number where the Souzas live and spoken to you over the phone? A. No, sir.

Q. On October 20th? A. No, sir.

Q. Your girl friend lived there in October, didn't she? A. Yes, sir.

Q. And you stayed there in October, didn't you?

A. Well, on and off.

Mr. Karesh: That is all.

Mr. Kernes: No further questions.

(Testimony of John Patrick McDonough.)

Q. (By Mr. Deasy): On this day in question, October 31st, 1948, did you see a package of any kind?
A. No, sir, I did not.

Q. You were seated in the car with Mr. Ingoglia and Mr. Ballard, is that correct?
A. Yes, sir.

Q. Where were you seated?

A. In the middle.

Q. Did you hear any discussion between Mr. Ingoglia and Mr. Ballard about a package?

A. No, sir. [346]

Mr. Deasy: I think that is all. Thank you, Mr. McDonough.

Mr. Dunning: No questions.

Mr. Ehrlich: No questions.

The Court: That will be all.

Mr. Deasy: May it please the Court, the defendant Leeper rests.

Mr. Dunning: On behalf of the defendant Ingoglia, your Honor, the defendant Ingoglia rests.

Mr. Ehrlich: Your Honor, I have instructed my client to rely upon the condition of the evidence as it now stands and the defendant Stoppelli rests.

Mr. Karesh: Just a minute now. That statement, "I have instructed my client to rely—" what is that? Does the defendant rest?

Mr. Ehrlich: I said that, Mr. Karesh.

Mr. Karesh: Under your instruction?

Mr. Ehrlich: That is correct.

The Court: Any rebuttal?

Mr. Karesh: No.

The Court: Both sides rest. The Court and counsel were discussing during this noon hour the matter of argument. Now, I understand that all counsel are in agreement that it is satisfactory that the argument be taken up tomorrow and that each side, the Government on the one side, and the defendants on the other side, are allotted two hours for argument, defense counsel [347] to divide it as they see fit. I also understood Mr. Karesh to say that possibly he would not require two hours, in which event he would be considerate enough to counsel for the defense to let them have a little of his time.

Mr. Karesh: I will.

The Court: With that understanding, we will adjourn the case, as far as the jury is concerned, until tomorrow morning at 10:00 o'clock. I would ask counsel to remain for a few minutes.

(Thereupon the jury retired from the courtroom and in their absence the following occurred:)

The Court: Gentlemen, I wanted you to remain here briefly for the purpose of mentioning to you the proposed instructions. I, of course, will instruct the jury as to the substance of these three counts and I will also instruct them as to the pertinent provisions of the Harrison Narcotics Act, the Jones-Miller Act and also the Federal statutes relating to conspiracy, the usual instruction in that regard given in these cases.

I will instruct them on the presumption of innocence and the doctrine of reasonable doubt, the usual instructions of the method of evaluating testimony, the instructions as to the functions of the jury and that of the Court, with which counsel are quite familiar. The Government submitted to me an instruction upon the matter of entrapment. I will give that instruction. I will instruct them generally on the matter of conspiracy, not [348] entirely, probably, in the form the instructions are proposed by the Government set forth, but substantially the same. I will instruct them that the oral admissions of the defendants should be received and considered by the jury with caution.

Are there any other matters that counsel wish to mention to the Court in connection with the instructions?

Mr. Ehrlich: The only one I think of at this moment is the right of the defendant to rely on the state of the evidence.

The Court: Yes, I will instruct the jury that a defendant may rely on the evidence or lack of evidence and he is not required to take the stand and testify, and the fact that he does not take the stand and testify can not be used against him.

Mr. Ehrlich: Then, as to the defendant Stoppelli, the instructions covering circumstantial evidence——

The Court: Yes, I will give that instruction. I will instruct them that the circumstances must be consistent with the guilt of the defendant and in-

consistent with any reasonable theory of his innocence and must show his guilt beyond a reasonable doubt before the jury can return a verdict based upon circumstantial evidence.

Mr. Ehrlich: I do not think of any more instructions, but if they do occur to me,—may I suggest them to your Honor tomorrow?

The Court: Yes, either tomorrow or Monday.

Mr. Karesh: Your Honor, we will withdraw the request for [349] instruction on entrapment, because nobody has taken the stand and said they were entrapped.

The Court: It is a question of what one testifies to by way of entrapment. It is a question whether or not the evidence requires the giving of such an instruction. I believe it is a matter for the jury to decide whether there was or was not entrapment under the facts of this case and I propose to give the instruction on entrapment.

Mr. Deasy: Under the general instructions, will your Honor give one that mere presence at the scene of the crime and mere opportunity to commit the crime——

The Court: I think that is unnecessary in view of the instruction upon reasonable doubt.

We will adjourn until tomorrow morning.

(Thereupon an adjournment was taken in the above-entitled case until tomorrow, Friday, June 10, 1949, at 10:00 o'clock a.m.) [350]

Afternoon Session, Monday, June 13, 1949

Charge of the Court

The Court: Ladies and gentlemen, under the law and judicial process in the Federal Courts, a person accused of crime is entitled to trial by a jury.

In the performance of that important function you may not act arbitrarily or capriciously. Since ours is a government of laws and not of men, it is your duty to comply with and obey the legal principles, and those legal principles it is my duty to give to you.

It is your duty to decide all the questions of facts that have arisen in the trial of the case. You are to decide, of course, the ultimate facts of the guilt or innocence of these five defendants.

You are expected to perform this duty calmly and dispassionately, without any feeling of rancor or prejudice against counsel or against the defendants or against any of the witnesses who have testified in the trial of the case.

In determining the issues of fact in the case it is your duty to decide what credence you are to put in the testimony of the various witnesses who have testified. That is exclusively your duty. I have nothing to do with the determination of these questions of fact.

Likewise I have a duty as a Judge of the Court to give you [351] the principles of law which are to govern you in your deliberations. As I do not

trespass upon your province, neither can you trespass upon mine. It is your duty to take these principles of law as I give them to you and apply them even though you may not agree with them or you may feel that they are not good law, nevertheless it is your duty to accept them and apply them.

Now there are certain rules which apply to all criminal cases. I give them to you to aid you in determining the weight of the evidence in the case and how you should adjudge the evidence.

In the first place, it is your duty to approach the case and come to your decision without any sympathy on the one hand and without any passion or prejudice on the other. You must decide the case purely upon the evidence received in the trial of the case. That evidence includes the sworn testimony of the various witnesses and the exhibits which have been received in evidence, also the stipulations which have been entered into in open court between counsel.

If, perchance, you have read anything in the newspapers, or have heard or received any information outside of the trial of the case bearing upon the case, all such matters are extraneous. You must not take countenance of them. You must not permit them to play any part in your deliberations.

At the time of the impanelment of the jurors, I told you [352] that the filing of the indictment in this case raises no presumption of the guilt of the defendants or either of them. I at that time told

you that it was a principle of law which must govern you that the defendants, and each of them, are presumed to be innocent, and they must be presumed to be innocent throughout the trial of the case. It devolves upon the prosecution, the government of the United States in this case, to submit to you that degree or quality of evidence which overcomes that presumption of innocence and convinces you to a moral certainty and beyond a reasonable doubt of guilt. If the proof does measure up to that degree, of course, your verdict will be guilty. If the proof does not measure up to that degree and if you entertain a reasonable doubt of guilt, it will be your duty to return a verdict of not guilty.

Each of the defendants in this case is entitled to the independent judgment of each juror.

You will observe, as you have been told during the trial of the case, and you will observe from other instructions which I give to you, that the defendants on trial here are jointly charged in counts one and two and that they are charged in the last count with having conspired together to violate laws of the United States. Now it goes without saying, of course, that though all the defendants are charged jointly, yet the guilt or innocence of each defendant must be determined by the jury separately as to each count. Each defendant has the same rights [353] as though he were being tried alone.

In the course of these instructions the words "defendants" and "defendant" will, for sake of

economy, be frequently used. It will be understood that each defendant is thus specifically referred to, and any instructions given referring to “defendants” or “defendant” generally, will be understood and considered by you as referring to each defendant separately and individually.

There are some standards which you may take into account in weighing the evidence in the case. One of the basic principles is that you can not bring in a verdict of guilty unless you are convinced beyond a reasonable doubt of the guilt of the defendants.

What is meant by a reasonable doubt? A reasonable doubt is what the term implies. It is a doubt based upon reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be imaginary or fanciful, or one that is perhaps captious or speculative. It means simply an honest doubt that appeals to reason and is founded upon reason. In this case, if, after you have considered the evidence, you have such a doubt in your mind as would cause you or any other reasonable or prudent man or woman to pause or hesitate in some act of grave concern in your own lives, then you would have such a doubt as the law contemplates is a reasonable doubt. While none of the defendants in this case can be convicted unless his guilt [354] of the offenses charged is proved beyond a reasonable doubt, the law does not require a demonstration,—that is, such a degree of proof as, excluding the possibility of error, produces abso-

lute certainty, because such proof in any case is rarely if at all possible. Moral certainty alone is required, that degree of proof which produces conviction in an unprejudiced mind.

Whether or not you believe the witnesses who have testified in this case and the weight that is to be attached to the testimony given by them is a matter for your exclusive judgment. In this case, as in all cases, we start out with the presumption that the witness is presumed to speak the truth. When a witness takes the stand we begin with the presumption that he is there to tell the truth. However, this presumption may be negatived in several ways. It may be negatived by the manner in which he testifies, by the character of his testimony, by contradictory evidence, by his motives. In passing upon the credibility of the various witnesses who have testified here on the witness stand in this case you may accept all or any part of their testimony, or you may discard or reject all or any part of the testimony of any witness. If it has been demonstrated to you during the trial of the case that any witness has testified falsely, it is your right to reject all of the witness' testimony, to distrust it, and not to consider it. You are not to be swayed by the fact that maybe there is a larger number of [355] witnesses on one side of the case than on the other. It is not the number of witnesses that determine the weight of the evidence, but it is the credibility of the witnesses who testified that is the decisive factor in determining the amount of weight you wish to attach to the testimony.

In order to evaluate the worth of the testimony that is presented to you, you may consider many factors: You can consider the circumstances under which the witness has testified, the demeanor or manner of the witness on the witness stand, his intelligence, the connection or relationship that he bears to the Government or to the defense, the manner in which he might be affected by the verdict, the extent to which he is corroborated or contradicted by other evidence, if at all, and any matter that in your view, reasonably, considering all the evidence, bears upon his credibility.

Now counsel have a right, and indeed it is their duty, to argue the case to you, and it is your duty to listen and to be attentive to and give weight and consideration to the arguments of the counsel. However, in their comments upon the facts of the case, if you find that there is any discrepancy between what they stated to you to be the facts of the case and the words that have come from the mouths of the witnesses, you must disregard, if there is such conflict, the statement as to facts made by the attorneys and consider only the evidence given by the witnesses in that regard. [356]

It is possible in this case, as it is any other case, that there may be some discrepancies in the testimony. It is conceivable that there may be minor discrepancies in the testimony of the witness or between the testimony of one witness and that of another. It is your duty not to pay attention to such minor discrepancies unless they reasonably

bear upon the guilt or innocence of the defendants or any of them, and if such discrepancies do bear upon the guilt or innocence of the defendants, then, of course, you should consider them.

Any fact may be proved by the testimony of but one credible witness and you may find a verdict upon the testimony of only one witness whom you believe testified truthfully even though a greater number of witnesses may have testified to the contrary, provided you believe that the testimony of the single witness is, with reference to its credibility and reliability, of greater weight than that to the contrary. You are not bound to believe the testimony of any particular witness unless in your opinion it is worthy of belief under the test mentioned for determining the credibility of witnesses, as stated to you in these instructions.

The opinion of an expert must be *weight* carefully. The weight to be given to such opinion should be estimated by considering the experience and learning of such witness, and the convincing logic of the reasons given in support of his conclusions. You are to consider the proof of definite facts, such as you believe are established by the evidence, and you may [357] disregard any opinion of any witness if you believe it to be contrary to the proved facts, or, though uncontradicted, you find it to be unreasonable.

At times during the trial of the case the court has asked questions of several of the various witnesses who have testified. You are not to infer from

this fact that the court has any leaning one way or the other as to the guilt or innocence of the defendants, or either, or any of them. Such questions as the court has asked have been asked pursuant to the authority, and indeed the duty, of the court to expedite the trial and to assist in bringing before the jury pertinent information for their consideration.

The fact that a defendant has not testified in his own behalf should not be considered or construed in any way against him, and you are not at liberty to indulge in any presumption of guilt or any unfavorable presumption or inference because he has not testified in his own behalf.

Under our law a defendant is entitled to take the stand or not as he chooses, and under our Constitution no man is compelled to be a witness against himself. No presumption whatsoever is to be indulged against him because he does not take the stand.

A defendant may testify in his own behalf. In doing so he becomes a witness in the case. His testimony, therefore, must be treated according to the same standards that apply to [358] the testimony of any other witness. In addition, you may consider the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as the result of your verdict.

Where the evidence is susceptible to two reasonable inferences, one pointing to the guilt and the other to the innocence of a defendant, the jury

should adopt the one of innocence and find him not guilty.

Evidence stricken by the court must be entirely disregarded by you and you must treat such evidence as if you had never heard or seen it.

You are instructed that the testimony of an accomplice or a co-conspirator, or evidence of oral admissions of a defendant ought to be received by you with caution.

There are two classes of evidence recognized and received in courts upon either of which a defendant may be convicted of crime. One is direct evidence and the other is circumstantial evidence. When a witness testifies as to what he perceived through his own senses, that is direct evidence. All other evidence is circumstantial evidence. Before you may find a defendant guilty upon circumstantial evidence, the circumstances must be consistent with each other and with the guilt of the defendant, and inconsistent with any reasonable theory of his innocence, and must show his guilt beyond a reasonable doubt.

The court charges you that evidence admitted for a limited purpose is to be considered by the jury for such purpose, and [359] none other. Under this rule, it is the duty of the jury, when the propositions of fact to which such evidence is addressed are limited, to exclude such evidence from their minds as to all other questions of fact in the case.

These ladies and gentlemen, are some of the general rules that apply in all criminal cases and

should be of assistance to you in determining the credibility of the witnesses and the weight to be attached to the testimony.

The indictment in this case is in three counts.

In the first count of the indictment it is charged that the defendants Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, on or about the 31st day of October, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, unlawfully did sell, dispense and distribute, not in or from the original stamped package, a certain quantity of a derivative and preparation of morphine, to-wit, heroin, in quantity particularly described as 12 envelopes, containing approximately 10 ounces and 436 grains of heroin.

In the second count of the indictment it is charged that the defendants Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, at the same time and place mentioned in the first count of the indictment, did fraudulently and knowingly conceal and facilitate the concealment of the same quantity of heroin, as described [360] in the first count.

In the third count of the indictment, it is charged that the defendants Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, at a time and place to said Grand Jury unknown, did conspire together and with other persons whose names are to said

Grand Jury unknown, to sell, dispense and distribute, not in or from the original stamped package, a quantity of a derivative and preparation of morphine, to-wit, heroin, in violations of Sections 2553 and 2557 of Title 26 United States Code, and to conceal and facilitate the concealment and transportation of morphine, to-wit, heroin, which heroin had been imported into the United States of America contrary to law, as said defendants then and there well knew, in violation of Section 174 of Title 21 United States Code; that thereafter and during the existence of said conspiracy one or more of said defendants, hereinafter mentioned by name, in the City of Oakland, County of Alameda, State of California, within said Division and District, did the following acts in furtherance thereof and to effect the objects of the conspiracy aforesaid:

1. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant Raymond A. Leeper had a conversation with George H. White, District Supervisor of the Bureau of Narcotics of the United States Treasury Department, in Room 306 of the [361] Clay-Ten Hotel, 1014 Clay Street.

2. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant James Marvin Ballard left the Clay-Ten Hotel, 1014 Clay Street, entered a 1941 Cadillac automobile, California License Number 17-K-120, parked in the vicinity of the said Clay-Ten Hotel, 1014 Clay Street, and

drove the said automobile away from the said vicinity of the said Clay-Ten Hotel.

3. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the said defendant James Marvin Ballard drove the said 1941 Cadillac automobile, California License Number 17-K-120, to the vicinity of the Clay-Ten Hotel, 1014 Clay Street, with the defendants Andrew Ingoglia and Patrick John McDonough as passengers in said automobile.

4. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendants James Marvin Ballard, and Andrew Ingoglia left the said 1941 Cadillac automobile, California License Number 17-K-120, and entered the said Clay-Ten Hotel, 1014 Clay Street.

5. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, immediately after the defendants James Marvin Ballard and [362] Andrew Ingoglia left the said Cadillac 1941 automobile, California License Number 17-K-120, and entered the said Clay-Ten Hotel, 1014 Clay Street, the defendant Patrick John McDonough sat in the driver's seat of the said automobile.

6. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the said defendants James Marvin Ballard and Andrew Ingoglia stood

in front of the closed door of room 306 of the Clay-Ten Hotel, 1014 Clay Street.

7. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, the defendant Raymond A. Leeper opened the door from the inside of Room 306, at the Clay-Ten Hotel, 1014 Clay Street, and received a package from the defendants James Marvin Ballard and Andrew Ingoglia, who were then and there standing outside of said door.

8. On October 31, 1948, in the City of Oakland, County of Alameda, State of California, within said Division and District, immediately after the defendants Raymond A. Leeper received the package from the said defendants James Marvin Ballard and Andrew Ingoglia, the said defendant Raymond A. Leeper shut the door of Room 306 and remained inside of the said Room 306 of the Clay-Ten Hotel, 1014 Clay Street, and the said defendants James Marvin Ballard and Andrew Ingoglia remained in front of the door outside of the said Room 306 for a short period of time. [363]

The first count of the indictment charges the defendant with violating an act of Congress known as the Harrison Narcotic Act, which provides as follows:

“It shall be unlawful for any purpose to purchase, sell, dispense, or distribute any of certain drugs, including heroin, except in the original stamped package or from the original stamped

package; in the absence of the appropriate tax paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found.”

The second count of the indictment charges these defendants with violating an act of Congress known as the Jones-Miller Act, which provides, in part, as follows:

“If any person fraudently or knowingly conceals, or in any manner facilitates the concealment of any narcotic drug after being imported or brought into the United States, knowing the same to have been imported contrary to law, such persons shall upon conviction be punished as the law provides.”

The third count in the indictment charges the defendants, Raymond A. Leeper, James Marvin Ballard, Andrew Ingoglia, Patrick John McDonough, and John Stoppelli, with conspiracy to violate the Harrison Narcotic Act and the Jones-Miller Act, in violation of Title 18 U.S.C., Section 371, which latter act [364] which provides in pertinent part as follows:

“If two or more persons conspire either to commit any offense against the United States, and one or more such persons do any act to effect the object of the conspiracy, each shall be punished as provided by law.”

The flight of a person after commission of a crime and before arrest is insufficient of itself to establish guilt, but if proved, is a circumstance to be

considered with other circumstances in the case in determining his guilt or innocence.

Although the first and second counts of the indictment charge the defendants with the sale and concealment of approximately 10 ounces 436 grains of heroin, it is not necessary for the government to prove that this exact amount was sold or concealed. Proof beyond a reasonable doubt and to a moral certainty that any quantity of heroin was knowingly and intentionally sold by defendants as alleged in the first count is sufficient to sustain a conviction under that count and proof to that degree that defendants knowingly and intentionally concealed any quantity of heroin as alleged in the second count is sufficient to sustain a conviction under the second count.

In every crime there must appear a joint operation of acts and intent.

To sustain a conviction under count 3 of the indictment, it is not necessary to show that the defendants, or either of them, did feloniously conspire to violate both the Harrison Narcotic [365] Act and the Jones-Miller Act. Proof beyond a reasonable doubt and to a moral certainty that the said defendants did unlawfully conspire to violate either the Harrison Narcotic Act or the Jones-Miller Act as alleged is sufficient to sustain a conviction under count 3 of this indictment, but before you can find a verdict of guilty under the third count, all twelve of you must be convinced beyond a reasonable doubt that the defendants conspired as alleged to violate one or both of said acts.

Referring to the charge contained in the first count, it is unlawful for any person to sell heroin except in or from the original stamped package.

In this connection, you are instructed that the Harrison Narcotic Act provides that proof by the government of the absence of appropriate tax paid stamps from the package containing the heroin in question is sufficient to place the burden on the defendant proved to be in possession of the heroin of establishing the fact that such heroin was actually sold, dispensed or distributed in or from a package bearing the proper internal revenue stamps.

Thus the absence of appropriate tax paid stamps from any package containing heroin which is sold, dispensed or distributed, is *prima facie* evidence of a violation of the Harrison Narcotic Act by the person possessing such package. *Prima facie* evidence is that which suffices for the proof of a [366] particular fact until contradicted and overcome by other evidence. The jury is to bear in mind, however, the principle of law that is defendants be not found guilty of an offense unless the jury is convinced of the guilt of the defendant of such offense to a moral certainty and beyond a reasonable doubt.

With reference to the charge in the second count, you are instructed that any person who fraudently or knowingly conceals or in any manner facilitates concealment of a narcotic drug, knowing the same to *be have* brought into the United States contrary to law, is guilty of a felony.

The law provides that the term "narcotic drug" shall include heroin.

The law further provides that when on trial for concealing or facilitating the concealment of heroin the defendants are shown to have had possession of such heroin, such possession shall be deemed sufficient evidence to authorize the defendants' conviction unless the defendants explain their possession to your satisfaction.

Therefore, if you are convicted from the evidence, to a moral certainty and beyond a reasonable doubt that the defendants now on trial had heroin in their possession on the occasion charged in the second count of the indictment, and intentionally and knowingly concealed, or facilitated the concealment of such heroin, you will find the defendants guilty unless they have explained their possession of the heroin to [367] your satisfaction.

On the other hand, and if you are not convinced to a moral certainty and beyond a reasonable doubt, or if the jury entertains a reasonable doubt that the defendants had heroin in their possession on the occasion charged in the second count and intentionally and knowingly concealed or in some manner facilitated the concealment of such heroin, you will find the defendants not guilty.

The Government is permitted to use informers to assist in the enforcement of the law and to present the opportunity to violate the law to a person believed to be engaged in the commission of crime.

The Government need not produce such informer as a witness in the trial of a case in which the informer assisted the Government.

Where the officers of the law have incited a person to commit a crime charged and lured him on to its consummation with the purpose of arresting him, the law will not authorize a verdict. But if the intent and purpose to violate the law are present, the mere fact that public officers furnish the opportunity is no defense. The Government is not engaged in the business of manufacturing criminals; it has enough to do to prevent the commission of crime. But it often becomes necessary for Government officers and agents to match their wits against the wits of the man who is deliberately violating the [368] law or who has violated the law and in such a case the officers or agents may afford him an opportunity to commit a crime.

If a man is engaged and prepared to break the law the mere fact that employees of the Government put it in his power to break it and thereby capture him in the act of breaking it does not constitute an entrapment and is no defense. If, however, a man has no disposition to break the law, and would not break it except he was induced and persuaded therein by the Government, then that does constitute entrapment and would be a defense warranting an acquittal of the crime charged.

It is the law that whoever directly commits an act constituting an offense defined in any law of the United States, or aids, abets, counsels, encour-

ages, commands, induces or procures its commission, is a principal. In this connection, if you find that one defendant did not directly commit any or all of the offenses charged in the indictment, but did aid and abet, or counsel, or encourage, or command, or induce, or procure the commission of any or all of such acts, you will find such defendant guilty of the offense which he so aided, abetted, counseled, encouraged, commanded, induced or procured the commission of.

A person who commits a crime though the agency of another with whom he has arranged for assistance in the commission of the crime, is as guilty in the eyes of the law as if he had committed the crime himself personally without such assistance.

Whoever directly commits any act constituting an offense defined in any law of the United States, or whoever *aid*, abets, counsels, induces or procures its commission is a principal and to be prosecuted and punished as such. In other words, whoever directly does the thing that is a violation of law is a principal as is also one who either aids, abets, counsels, induces, or procures the doing of that act.

“Aid means to help, support, assist; one who helps or promotes in doing something; a helper or assistant.

“Abet” means to instigate or encourage by aid or countenance; to contribute; as an assistant or instigator in the commission of an offense.

It is essential to the guilt of a person charged

with aiding and abetting the commission of the crime, that such person's acts shall have contributed to the effectuation of the offense. It is sufficient if it facilitated the result and rendered the accomplishment of the offense more easy.

Usually, to aid and abet in the commission of an offense the person rendering such aid or assistance is present, to render support and confidence, but he may aid, abet, if absent.

A person who knowingly renders assistance, co-operation and encouragement in the commission of an offense is one who aids and abets in the commission.

I instruct you that a prosecution for conspiracy may be maintained either at the place where the conspiracy was formed, [370] or where one or more of the overt acts took place. One physically without the jurisdiction may be a party to a crime therein. If a crime is committed in the Northern District of California, the commission of which crime has been aided and abetted by another outside the jurisdiction of the Northern District of California, the aider and abetter is liable as though he had actually committed the crime in the Northern District of California.

Unless you find beyond a reasonable doubt, or if you entertain a reasonable doubt that a defendant knowingly and intentionally committed the offense alleged, or knowingly and intentionally did something to aid or abet the other defendants, you may not find him guilty of such offense.

The law under which the third count of the indictment in this case is drawn provides that if two or more persons conspire to commit any offense against the United States, and one or more of them does any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty.

In order to establish the crime charged, it is necessary, First, that the conspiracy or agreement to commit one or both of the particular offenses against the United States as alleged in the indictment be established, and Secondly, to prove further that one or more of the parties engaging in the conspiracy has committed one or more of the overt acts alleged in count three to effect the object thereof. [371]

The success or failure of the conspiracy is immaterial, but before a defendant may be found guilty of the charge, it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendant was an active party thereto.

In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a conspiracy as charged in the third count in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in that count. It is necessary further that in addition to the showing of the unlawful conspiracy or agreement, the Government proved to your satisfaction,

beyond a reasonable doubt, that one or more of the overt acts described in the third count in the indictment was done by one or more of the defendants or at their direction or with their aid.

Under the charge made the conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the conspiracy and unlawful agreement charged, and that he continued to be such up to the time that overt acts were committed, if the evidence shows that there were any such. The mere fact that either or any of the defendants named may have engaged in the performance of any of the acts [372] charged in the indictment as overt acts, could not authorize a conviction by reason of that fact alone, but it is necessary to show that such defendants were parties to the conspiracy and unlawful agreement before their guilt of the offense charged is made out.

Each party must be actuated by an intent to promote the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object. Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. And if a person understanding the unlawful character

of a transaction, encourages, advises, or in any manner, with a purpose to forward the unlawful enterprise, or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the conspiracy may be found, like any other fact, as an inference from the facts proved.

Where the existence of a criminal conspiracy has been shown, [373] every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of the conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the conspiracy or any other

essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men and women that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or any of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties [374] to the conspiracy as charged, then you should make the deduction and find accordingly.

The evidence in proof of a conspiracy will generally, from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design and to pursue it by common means. If it be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same so as to complete it, with a view to the attainment of that same object, you would be justified in the conclusion that such persons were engaged in a conspiracy. Nor is it necessary to prove that the conspiracy originated with all of the defendants, or that they all met during

the process of its concoction; for every person entering into a conspiracy or common design already formed is deemed in law a party to all acts done by any of the other parties before or afterward, in furtherance of the common design. Although, as I have stated, a common design is the essence of the charge, such design may be made to appear when the defendants steadily pursue the same object, whether acting separately or together by common or different means, all leading to the same unlawful result.

If the evidence of the separate details of the transaction as it was carried out indicates with the requisite certainty [375] the existence of a preconceived plan and purpose, that is sufficient to permit you to infer that the illegal agreement charged was in fact entered into.

The time and place of the formation of the conspiracy are immaterial, provided any of the overt acts were committed within the jurisdiction of this Court, on or about the respective dates alleged. The Government may have no knowledge of the exact time or place of the formation of the conspiracy, and to require it to specify the particular time and place, would defeat almost every prosecution under this act. For these reasons the time and place of the formation of the conspiracy are sufficiently fixed by the overt acts set forth in the indictment.

If any of the parties herein entered into a conspiracy, or aided or abetted the commission of the

crimes as set forth in the indictment, within a period of three years from the filing of the said indictment on February 23, 1949, then the time element has been fully satisfied under the statute.

An overt act need not be criminal in nature, if considered separately and apart from the conspiracy; it may be as innocent as the act of a man walking across the street or driving an automobile, or using a telephone. But, if, during the existence of the conspiracy, the overt act is done by one of the conspirators to effect the object of the conspiracy, the crime is complete, and it is complete as to every party found by you to [376] be a member of the conspiracy, no matter which one of the parties did the overt act.

It is not necessary that all the overt acts charged be proved, but it is necessary that at least one of these be proved, and that it be shown to have been in furtherance of the object of the conspiracy. Other overt acts than those charged may be given in evidence, but proof of one of those charged in the indictment is indispensable.

To render a person criminally liable as a conspirator it is not necessary that he received any pecuniary advantage or benefit from the conspiracy or that he joined the conspiracy with the view of obtaining a pecuniary advantage or benefit. But before a defendant can be found guilty of conspiracy, there must be proof beyond a reasonable doubt that he knowingly and intentionally became a party to the unlawful undertaking.

Now I think, ladies and gentlemen, I have given you as briefly as is possible for me to do so the various rules and principles that should govern and guide you in the determination of the factual questions which are yours for decision. If you can conscientiously do so, you are expected to agree upon a verdict. You should freely consult with one another in the jury room. If after consulting with one another you should be convinced that your view of the case is erroneous, please do not be stubborn and do not hesitate to abandon your own view under such circumstances. On the other hand, it is entirely proper [377] and indeed your duty to adhere to your own view if after a full exchange of ideas you still believe you are right.

If it should become necessary for you to communicate with the Court while you are deliberating in the jury room upon any subject matter connected with the trial of the case, you should not indicate to the Court in any manner how you stand numerically on the question of the guilt or innocence of either of the defendants, and this caution you should observe at all times until you have finally arrived at a verdict.

It will take all twelve of you to agree before you have a verdict. When all of you have agreed upon a verdict it is the verdict of the jury.

Upon retiring to the jury room you will, of course, select one of your number to act as your foreman or forelady, and it will be the duty of the one so selected to act as your spokesman in any further proceedings in this court.

If after you have retired to deliberate and while you are deliberating you wish to see any or all of the exhibits in the case, you may send word to the court.

The form of verdict prepared by the clerk for you has no significance in and of itself. It is prepared merely for the purpose of saving you the time and trouble of preparing it when you reach a verdict. I will read the verdict to you. After the title of court and cause:

“We the jury find as to the defendants at the bar as [378] follows:

“Raymond A. Leeper, blank on the first count, blank on the second count, blank on the third count.

“James Marvin Ballard, blank on the first count, blank on the second count, blank on the third count.”—

the same as to each one of the defendants. Of course you will write in the words “guilty” or “not guilty,” whichever expresses your verdict.

You are expected to find a verdict as to each defendant as to each count if you can conscientiously do so.

Has the Government any exceptions?

Mr. Karesh: None, your Honor.

The Court: Have the defendants any exceptions?

Mr. Deasy: None, your Honor.

Mr. Dunning: None, your Honor.

Mr. Kearns: None, your Honor.

Mr. Ehrlich: None, your Honor.

The Court: The jury will retire for their deliberations.

(Thereupon at 2:15 p.m. the jury retired in the custody of the marshal to deliberate upon their verdict, and at 3:35 p.m. the jury returned to the courtroom, and the following proceedings were had:)

The Court: The record will show the jurors—

I have two messages that have been sent to me by the jury. The first reads: “May we have the interpretation as to whether [379] aiding, assisting or abetting constitutes violation of the first count and violation of the second count?”

I suppose that means whether aiding and abetting would constitute a violation of the first and second counts.

Under our law the distinction between the principals and accessories have been done away with, and anyone who aids and abets in the commission of an offense is to be tried and punished the same as a principal. One does not have to necessarily perform a particular act to be guilty of the offense, and he does not necessarily have to do the act which is an offense. As long as he intentionally and knowingly aids and abets in the commission of the offense he is to be charged and punished the same as a principal.

Does that answer your question sufficiently?

Juror No. 6: Yes.

The Court: The other question: “Can we have a transcript of all the testimony?”

I don't know what answer to make upon that. I assume that counsel have had a daily transcript of it. It is not in evidence as a transcript unless there is a stipulation that the transcript may be available to either side and may be handed to the jury.

Juror No. 10: Your Honor, it is more or less the opinion, I believe, of the jury that we won't need it, because you have clarified some information we wanted in your first statement. [380] I don't believe we will need it now.

The Court: If you do, send further word to me. Is there any exception to be noted by the Government?

The Government: No.

The Court: By the defendants?

Mr. Deasy: None, your Honor.

Mr. Kearns: No.

Mr. Dunning: No.

Mr. Ehrlich: No.

The Court: Now you may retire.

(The jury at 3:40 p.m. again retired to deliberate upon their verdict.)

CERTIFICATE OF REPORTER

We, Clarence F. Wight and Joseph J. Sweeney, Official Reporters, certify that the foregoing 381 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ CLARENCE F. WIGHT.

/s/ JOSEPH J. SWEENEY.

[Endorsed]: Filed June 21, 1949. [381]

Monday, June 13, 1949

(The jury returned into court, after deliberating upon their verdict.)

The Court: The record will show that the jurors are all present. Has the jury agreed upon a verdict?

Juror Gus A. Childress (Foreman): We have, your Honor.

The Court: Have you agreed upon a verdict as to each defendant as to each count?

Juror Childress: We have, your Honor.

The Court: If I may see it.

(The verdict was handed to the Court.)

The Court: The Clerk will read the verdict.

The Clerk: Ladies and Gentlemen of the Jury, harken to your verdict: "We, the jury, find as to the defendants at the bar as follows: Raymond A. Leeper, guilty on the first count, guilty on the second count, guilty on the third count; James Marvin Ballard, guilty on the first count, guilty on the sec-

ond count, guilty on the third count; Andrew Ingoglia, guilty on the first count, guilty on the second county, guilty on the third count; Patrick John McDonough, guilty on the first count, guilty on the second count, guilty on the third count; John Stoppelli, guilty on the first count, guilty on the second count, guilty on the third count. G. A. Childress, Foreman."

So say you all, Ladies and Gentlemen? [382]

Jurors: Yes.

The Court: Do you desire to have the jury polled?

Mr. Deasy: No.

Mr. Kernes: No.

Mr. Dunning: No.

Mr. Ehrlich: No.

The Court: The Clerk will record the verdict. Judgment will be entered in accordance with the verdict. Ladies and Gentlemen, you are now excused until further notice.

(The jurors retired from the courtroom.)

Mr. Ehrlich: Your Honor, on behalf of the defendant Stoppelli, I ask that your Honor permit the defendant to remain on bail pending a motion for a new trial, and if that is denied, pending his appeal.

I believe that the defendant Stoppelli has a good ground, good and valid ground for appeal in this matter.

There is no sense in my going over all of the law

in the situation. I am convinced personally that he has something that justifies his going to the circuit court of appeals.

The defendant Stoppelli in that connection, your Honor, came here voluntarily from New York and deposited his bail after he got here, which indicates that the man is not going to avoid the jurisdiction of this court.

The Court: Of course, the situation is somewhat altered now. Each of the defendants is remanded to the custody of the [383] Marshal. Your motion I do not care to consider today.

Mr. Ehrlich: Yes, your Honor.

The Court: I want to have from the United States Attorney his advice. I know nothing about this particular defendant other than what has been shown in the trial of the case. I propose to refer the matter to the probation officer for pre-sentence investigation. That is done, I now order the matter referred to the Probation Officer for pre-sentence investigation. The report is to be returned on the twenty-seventh of this month. In the meantime, I am not disposed to admit either or any of the defendants to bail unless—I will change that order; I cannot be here on the twenty-seventh; make it the twenty-third. The twenty-seventh starts the conference of the Ninth Circuit in Los Angeles. We will all be in Los Angeles at that time, and I am obliged to be in Reno on the twenty-fourth of June. So the order as to the probation officer is that he makes his report on the twenty-third day of June at 10:00 o'clock A.M.

Now, in reference to the matter of bail, I am not prepared to pass on that today as to this one defendant.

Mr. Karesh: The customary rule, your Honor, pending judgment is that the defendants be remanded.

The Court: I appreciate that.

Mr. Ehrlich: Yes, I am familiar with that.

Mr. Karesh: And we would oppose release on bail. Particularly—if your Honor would ask us, we would tell you the [384] defendant's record, if we may now, the defendant Stoppelli?

The Court: Do you have that record?

Mr. Karesh: Yes. He is five times a convicted felon. Ingoglia is three times a convicted felon.

The Court: Well, then, your motion is denied.

Mr. Ehrlich: What day for argument on the motion for a new trial, your Honor?

The Court: The twenty-third.

Mr. Dunning: On behalf of the defendant Andrew Ingoglia, your Honor, I likewise desire to make a similar motion as Mr. Ehrlich has made, and request for the purpose of the record that the defendant Ingoglia remain on bail pending hearing of the motion for new trial.

I don't suppose your Honor desires to hear argument on that now, but for the purpose of the record I make a motion for a new trial on behalf of the defendant Ingoglia, and request that I be permitted to file a written motion within the five days allowed by law.

The Court: Very well. Your motion that he be admitted to bail is denied.

Mr. Deasy: On behalf of the defendant Ballard and the defendant Leeper, I make the same motions previously made by Mr. Dunning and Mr. Ehrlich.

I may say that the record in this case indicates that this was the first arrest of the defendant Ballard. His bail is in [385] a substantial amount, \$5,000. I would ask that he be permitted to remain on bail.

The Court: That matter can be passed on much more satisfactorily if I have a report from the Probation Officer. I am going to deny it as to each one of the defendants.

Mr. Kernes: On behalf of the defendant McDonough I make the same motion, for the record, your Honor.

The Court: The motions are denied. The matters are continued to the twenty-third day of June at 10:00 o'clock.

Mr. Ehrlich: Your Honor, may I talk to you a moment?

The Court: Yes.

Mr. Ehrlich: It occurs to me that the rules are that the motion for a new trial—my recollection is that it has to be heard within five days, or is it that it must be filed within five days?

The Court: It must be filed.

Mr. Ehrlich: It must be filed. [386]

Tuesday, July 5, 1949

The Clerk: United States vs. Leeper, Ballard, Ingoglia, McDonough and Stoppelli.

Mr. Ehrlich: Your Honor, may the defendants be seated while we argue this motion?

The Court: Yes, the defendants may be seated.

Mr. Ehrlich: And may I address myself to the Court on behalf of the defendant Stoppelli?

The Court: Yes.

Mr Ehrlich: First, your Honor, without going over all of the evidence in this matter—it must be as fresh in your Honor’s mind as it is in my mind—we desire to point out from *Terry vs. United States*, reported in 7 Federal (2d) 28——

The Court: 7 Federal (2d)?

Mr. Ehrlich: 7 Federal (2d) 28, and *Ford vs. United States*, 273 United States 593, both to the same point, that the scope of a conspiracy must be gathered from the testimony and not from the terms of the indictment.

That is a general rule laid down by the United States courts, and its intention, as I understand it, is that because two or more people have been indicted and charged with a conspiracy that that in and of itself lends nothing to the case as against the individuals charged. In other words, the conspiracy, if existing at all, must be gathered from the [387] evidence adduced in the courtroom, and is not to be circumscribed by the indictment itself.

So that in the case of Stoppelli it is necessary to look to the things that he, Stoppelli, did, insofar

as his becoming or being a part of this so-called conspiracy.

In the Terry case, which is followed by all Federal courts and by the United States Supreme Court, they lay down another general statement which is old in the law of conspiracy: A conspiracy is not an omnibus charge under which you may prove anything and everything and convict for the sins of a lifetime.

Now, those two principles, your Honor, first round out the conspiracy.

Now, in our present case, briefly, where does Stoppelli stand?

The only evidence, the only word of evidence is the fact that on one of the eleven envelopes there was the tip of the ninth finger. There is no evidence of cooperation; there is no evidence of profit; there is no evidence of knowledge; there is no evidence of doing; there is no evidence of abetting; there is no evidence of proximity. There is nothing. And it is just as reasonable to presume, your Honor, and the law is that the evidence being circumstantial solely and wholly, that it must be inconsistent with any rational hypothesis of his innocence before the jury can find him guilty.

I should like to read briefly from *Bullock vs. Commonwealth*, [388] reported in 94 ALR, 407:

“It has been often enunciated by this court that a conviction may be had on circumstantial evidence alone, although it is sometimes looked upon with suspicion, where all the links in the chain of cir-

cumstances are sufficient to justify conviction. But circumstantial evidence, to justify a conviction, must point unerringly to the accused's guilt, and it must do more than create a suspicion of guilt. To be sufficient to sustain a conviction it must exclude every reasonable hypothesis of innocence. If the circumstances tending to show his guilt are as consistent with the defendant's innocence as with his guilt, they are insufficient."

The Court: But, nevertheless, it is a problem for the jury.

Mr. Ehrlich: But I want to go further. I will reach that in a moment, if I may, your Honor.

"If the circumstances tending to show his guilt are as consistent with the defendant's innocence as with his guilt, they are insufficient."

Now, bringing into my discussion for the moment as to this being a matter for the jury: Basically, your Honor, that is the law, not only of this state, but of every other state in the United States, with the possible exception of Louisiana; but the jury cannot be arbitrary in its ruling, the jury cannot say [389] that because there is something here therefore we will resolve this as against the defendant. The law is that they must resolve it, your Honor, in favor of the defendant and against the prosecution where there is only the type of evidence such as we have in this case. A jury, your Honor, may not determine that merely because a man is charged with conspiracy and merely because

there is one disconnected act, that therefore, and because he was charged with a conspiracy he is a part of the conspiracy.

The Court: Let us analyze that—I follow your argument, but let us analyze that: There is the inference of identity from the fingerprint; there is testimony that the fingerprint was placed upon the envelope within a period of thirty days prior to the first of November, was it not?—That the silver nitrate was placed on it by the officer, and there is the testimony of the expert to the effect there was a powdery substance in the envelope, as shown by the different shadows of the print.

Now, true, the defendant is not required to take the stand to testify in his own behalf, and no inference can be drawn of guilt from his failure to take the stand to testify; but the act says that possession establishes a *prima facie* case, one section states, and the other states if possession is shown, then the duty is on the defendant to explain the possession. [390]

Now, isn't there sufficient inference from the evidence that this envelope was as shown by the testimony of the expert to have been in the hands of the expert within thirty days prior to the capture of the other defendants, and the taking into his possession of this evidence, plus the fact that there was a powdery substance in it at the time the print was put on it, isn't that sufficient to draw the inference clearly that this defendant had possession during that thirty day period of this envelope,

and put upon him the burden of explaining the possession, which he did not do?

Mr. Ehrlich: May I answer that, your Honor: One, let's take the point your Honor made that the print was put on there within thirty days prior to the time of arrest. There is no evidence here that that print—and for the sake of this discussion I must admit that it is a good and valid print; we are not going to argue the value of the evidence—is there any evidence here that within that thirty day period there was heroin in that envelope?

The Court: There was a substance, and it was a powdery substance.

Mr. Ehrlich: Yes.

The Court: And in the envelope taken by the officers there was a powdery substance consisting of heroin.

Mr. Ehrlich: Yes. Is there any evidence, your Honor, that this defendant was with these people, knew these people, [391] did anything with these people, had any profit from this deal?

Assuming, for the sake of answering your Honor's question in this argument, assuming that he did sell the heroin to the other defendants: Let's assume that—and I have some cases which will answer some of your Honor's questions; but an inference, your Honor, may be drawn from a proved fact, and as we move from one proved fact to another, we follow in California and in this jurisdiction the so-called legal chain theory of circumstantial evi-

dence. In other words, that before a conviction can be had each link in the chain connecting the defendant with the commission of the crime must be proven to a moral certainty and beyond a reasonable doubt. That is, you can't leave out one or two spots.

Let us reverse the matter, your Honor: Let us say that Stoppelli sold to the defendants or gave to the defendants the heroin in question. Now, let us assume that he had it in his hands, put the mark on there thirty days before, had possession of the narcotics and he sold them. Does that make him a co-conspirator with these defendants?

The point, the entire argument is predicated upon the proposition as to whether Stoppelli was or was not a co-conspirator. And in answering further in detail your Honor's question, I should like to read several more cases to you.

In *Kassin vs. United States*, 87 Federal (2d) 183—

The Court: 87 what? [392]

Mr. Ehrlich: 87 Federal (2d) 187—would your Honor forgive me, please, I didn't intend that. In the *City of Indianapolis vs. Wheeler*—that is the case I want—132 Federal (2d) 879.

Now, in this case, your Honor, the defendant in the conspiracy case rented a room to one of the co-conspirators and permitted him to connect electric wiring to his own fuses, and so forth, and acting as an intermediary in the sale of certain land. In other words, there was a lot of cooperation, a lot going on between the defendant and the conspirators.

Quoting the court——

The Court: What was the essence of the conspiracy?

Mr. Ehrlich: In *Indianapolis vs. Wheeler* it involved—this case, I think, involved liquor. I can't read my notes clearly now, I wrote them so fast. I think this case involved liquor, as does the *Falconi* case, and the extent of the connection with the unlawful conspricay was limited to the renting of a room in Chicago and permitting the connection of electric wiring and acting as intermediary for the sale of certain lands. The Court held——

The Court: Not a thing there that was in any way illegal in and of itself.

Mr Ehrlich: But it was a fraud case where they used——

The Court: I mean, what he did there could have been done entirely innocently, but the possession of these narcotics [393] presents an entirely different thing.

Mr. Ehrlich: Well, if your Honor wants a narcotic case, I will give you one right direct, if I may, sir. In other words, your Honor thinks that in view of the fact that this is a narcotic case that perhaps the testimony can be weaker than that prescribed in the rule, or do I misunderstand the Court?

The Court: I simply state this to you: That where an act innocent in and of itself was done, unless it is connected up in the same way with some illegal operation, then you have a situation far dif-

ferent than in this case where the act your client did, the possession of the narcotics, was in and of itself a violation of the act.

Mr. Ehrlich: I shall read, if your Honor please, from 113 Federal (2d) 982, United States vs. Koch. The defendant was charged with a conspiracy to import and unlawfully dispose of narcotics. The evidence showed that one of the alleged conspirators, Celli, obtained 171 ounces of cocaine and 12 pounds of opium in Montreal, Canada; that he telephoned to Mauro in New York about it and took it to Boston with the connivance of one Bovell and delivered it to Mauro in Brooklyn.

The only evidence connecting appellant Koch was as follows: That appellant met Mauro on a street in New York, inquiring of him, Mauro, if he had cocaine to sell; upon being informed by Mauro that he had, Koch agreed to buy it for \$25.00 an ounce. It [394] was understood that the cocaine would be delivered to Mauro's house in Brooklyn to one Al Kobach.

This plan was carried out and a few days after that Mauro met the appellant and Kobach and appellant complained that the cocaine quote, "did not show good" close quote, and asked Mauro to take some of it back, which Mauro agreed to do, at a meeting some days later. Several days later they did meet and the appellant then paid Mauro the agreed price for seventy ounces, and at the same time returned seventy-five ounces, which were later sold by Mauro, one can being sold subsequently to a Government agent.

The question for determination was whether the evidence was sufficient to prove that the appellant had joined the conspiracy.

The Court said at page 983:

“Here, for aught that appears, the appellant had no knowledge whatever as to how Mauro had obtained the cocaine. No doubt he knew that Mauro’s possession of it was unlawful, and that was true also of the sale to and purchase by him, but that was not enough to warrant a finding that he knew that Mauro was not, or had not previously been acting alone in getting possession of the drug. The purchase of the cocaine from Mauro was not enough to prove conspiracy in which Mauro and the appellant participated. They had no agreement to [395] advance any joint interests. The appellant bought at a set price and was under no obligation to Mauro except to pay him that price. The purchase alone was insufficient to prove the appellant a conspirator with Mauro and those who were his co-conspirators.”

Citing *Dickersen vs. United States*.

“It was necessary to the Government’s case to show that the appellant was in some way knowingly associated in the unlawful common enterprise to import the drugs and dispose of them unlawfully.”

There is a case, your Honor, the Koch case. There was a great deal of maneuvering, a great deal of buying, a great deal of returning, a great deal of finding fault in merchandise in which all of these people participated, and the court said that that was not enough, it was necessary to the Government’s

case to show that the appellant was in some way knowingly associated in the unlawful common enterprise, citing *United States vs. Peoni and Muyres vs. United States*.

There is a case ten times stronger than the case that has been adduced against this defendant.

Now, I have another narcotic case—of course, your Honor is familiar with the general cases that where a man knowingly sells to others things to be used and he even knows that they are to be used in violation of the law, that he cannot be held as a co-conspirator unless it appears that he [396] was a part and parcel of that conspiracy. That is the *Falcone* case decided by the United States Supreme Court, to which I will refer in a few moments.

The *Falcone* case—that is 311 U. S. 205—

“The gist of the offense of the conspiracy is agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy. Those having no knowledge of the conspiracy are not conspirators, and one who without more furnishes supplies to an illicit distiller is not guilty of conspiracy, even though his sale may have furthered the object of the conspiracy to which the distiller was a party, but of which a supplier had no knowledge.”

That is a rather long case going into the general subject of conspiracy.

Now, in 319 U. S. 703, *Direct Sales Company vs. United States*, the plaintiff was a drug manufacturer and wholesaler and conducted a nationwide

mail order business. The evidence relates chiefly to the plaintiff's transactions with one Tait and dealings with others. Tait dispensed illegally large quantities of morphine, which he purchased from plaintiff. The indictment charges the plaintiff, Tait and three others, to and through whom Tait illegally distributed the drugs, with conspiracy to violate the narcotics act. They were all charged together, [397] the plaintiff, Tait, and three others.

The plaintiff supplied Dr. Tait with morphine for a long period, and Dr. Tait gradually increased the morphine to a point where he was receiving 5,000 to 6,000 one-half grain tablets per month. The average physician purchased no more than 200 to 400 half-grain tablets a year. This continued over a three or four year period.

First the Court referred to the *Falcone* decision. That decision comes down merely to this: That one does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he knows of the conspiracy; and the inference of such knowledge cannot be drawn merely from knowledge the buyer will use the goods illegally. The scope of the concession must be measured in the light of the fact with reference to which it was made. This relates both to volume of sales and to casual and unexplained meetings of some of the respondents with others who were convicted as conspirators.

The Court found this evidence too vague and uncertain to support a finding the respondents knew of the distiller's conspiracy.

It then goes on down to re-recite the Falcone case and reciting the testimony that they were selling recklessly to a man and must have known that no doctor could use 5,000 to 6,000 one-half grains per month. That is 12,000 quarter grains [398] per month, when the average amount taken by the doctors generally is about 400 one-quarter grains a year, and here they were selling this man 12,000 one-quarter grains per month, and he was handling it with others, and then they said that that was not proof of conspiracy.

There is one case that is not a narcotic case, but it was, in fact, a great deal like the present case, where there were certain doctors, who, upon examining people's eyes would inform them that they needed a very special type of operation and would charge these people a great deal of money, when in truth and in fact they didn't need any such operation, and it was strictly an out and out bunco game, *Mazurosky vs. United States*, 100 Federal (2d) 958. The defendant was indicted for conspiracy to use the mails to defraud. The appealing defendant was a pawn broker who knew a party by the name of Nelson and a Dr. Brown. Nelson and Dr. Brown after examining patients would tell them at an eye operation was necessary, and then perform a fake operation, charging them an average price of \$500.00.

The Court held that evidence of the defendant's association with others who were engaged in the eye frauds and depositing checks for collection in

banks for them and using the mails for that purpose was insufficient to sustain a conviction of conspiracy and using the mails to defraud, in the absence of evidence that the accused had knowledge of the [399] fraudulent scheme at the time he cashed the checks.

The Court said: "However, in our opinion the evidence fails to support any such finding. The only evidence in the record suggesting guilty knowledge on the part of the defendant is that he knew that ten years before Nelson had been engaged in an eye fraud perpetrated upon Wagner; that defendant at that time cashed the check obtained by Nelson from Wagner; that defendant had to pay in excess of a thousand dollars to square that check; that the defendant during the years 1929 to 1935 had asked Nelson, 'How are the suckers, Slat's?' 'Are you making any big sales?' And that in 1938 the defendant told Nelson that the checks were getting a little hot. It is not shown in the record whether this latter statement was made before or after the *belter* transaction, which was the subject of the fourth count of the indictment.

"That the defendant may have had guilty knowledge rests upon suspicion only, arising from his acquaintance or association with Nelson and others. That is not enough to convict.

"It is our opinion that there is no evidence in the record from which it can be found that the defendant had knowledge of the fraudulent schemes at the time he cashed the checks for those actively

engaged in the frauds. The most that can be said from the evidence is that the defendant cashed the checks under what may be said to have been suspicious circumstances.”

There are a great many other cases, your Honor. In *U. S. vs. Bruno*, 105 Federal (2d) 921, the facts were about as follows: Bruno and Iacono were indicted with 86 others. The evidence disclosed that the object of the conspiracy was to smuggle narcotics into New York and distribute the narcotics to addicts in New York, Texas, and Louisiana. This plan required cooperation with the smugglers, middle men who paid smugglers, and two retail groups, one in New York and one covering Louisiana and Texas. The Court found sufficient evidence to convict Bruno, but as to Iacono the Court said:

“Iacono was probably guilty also, but the evidence to establish his guilt was tenuous. All that was shown was that he had received in New York seven money orders from members of the Louisiana retailers, some of them taken out in assumed names. They were for about \$6,800 in the aggregate, but it did not appear that they covered the proceeds from the sales of narcotics. Even if these documents were enough to convict Iacono of complicity in some sort of illicit enterprise—itself a somewhat gratuitous assumption—the accused were shown to have been a disreputable lot and all sorts of ventures may have been afoot among them. The remittances would [401] have been more closely interwoven with the sale of narcotics. The case is close, but we think that not enough was shown.”

Now, there is a case. Here was a man who was doing the cashing of all the checks coming out of Louisiana and Texas, and the Court said, "Well, he may be guilty, we won't argue that, but they have got to do more, they have got to show that he is part and parcel of that conspiracy, they have got to show that he knew about the conspiracy, they have to show that he did something about the conspiracy and narcotics."

There is not one word that is inconsistent legally with the defendant's innocence. Suppose he had taken not only the one envelope, but suppose he had taken all of the eleven envelopes and had gone over and delivered them to the other defendants and had said to them, "Here, this will cost you \$500.00," and went on about his business. He certainly would not be a co-conspirator, even though he knew they were going to use it for illicit purposes.

And here you do not even place the defendant in the presence of any of the other defendants. You show no association, you show no profit, you show no course of conduct, you show nothing at all except one fingerprint on one envelope.

And suppose, your Honor, suppose he put his fingerprint on that one envelope: Is he too, then, to be burdened with the other eleven envelopes on which he had no fingerprint? [402] Where would that divide the amount and quantity of his crime? Suppose he sold just that one? Suppose he gave it to them?

Now, if we add to that the statement on page 251 of the transcript, the voluntary statement—no, it wasn't a voluntary statement, it was asked by Mr. Karesh speaking to Greene:

“Now, how did you come to that conclusion, that the print on the envelope is the print that belongs to John Stoppelli, the defendant?

“A. We have a national book, every district supervisor in the *company* in the Narcotic Bureau, of all of the major known——”

And then Mr. Karesh broke in.

That, your Honor, added entitles this man to a new trial. I don't know what went on in the jury room, but I venture to say that every juror that sat on that jury weighed that, and even though your Honor struck that from the record, you can't unring the bell. These people are just like we are; they hear it and they remember, and they must have said either to themselves or audibly to others, “Well, this fellow, he has got a bad record. You heard what Greene said, he compared that fingerprint with the fingerprints in the National Narcotics Book which is maintained and possessed by every Bureau.”—

And, so, your Honor, if there is to be any mistake made, [403] it ought to be made on behalf of the defendant, rather than against him. I have no community of interest with this type of business, but I have every interest and every community of thought and feeling with the law as it ought to be administered, and it is more important, your Honor,

that this man get a new trial on this weak evidence than it is that a thousand men——

The Court: As I understand your argument, it is pointed—excepting the statement that you just mentioned about the testimony which you claim Mr. Karesh elicited from the witness, as I understand your argument it is pointed to the third count, the conspiracy?

Mr. Ehrlich: That is the conspiracy count.

The Court: How about the other two?

Mr. Ehrlich: As to the—may I get my copy of the indictment? Now, the first count is the Harrison Act and the second count——

The Court: The first is the sale and the second is the concealment.

Mr. Ehrlich: Yes, and the third is the conspiracy. As to the sale, there is no evidence in the record of any aiding or abetting on the part of the defendant, Stoppelli, which would bring him within the classification of a principal. There isn't one word that he aided or abetted in the sale or the delivery of this merchandise.

The Court: It goes further than sale, dispense and [404] distribute.

Mr. Ehrlich: Possession.

The Court: Sale—dispensing and distribution are included in the first count.

Mr. Ehrlich: Yes. There is no evidence that he aided in the sale, there is no evidence that he dispensed, there is no evidence that he distributed.

The Court: Other than that it went from his hands to somebody else's hands.

Mr. Ehrlich: Your Honor, supposing I had it in my hand and it next appears in your Honor's possession, and that is all we know? Can we infer from the fact that I had it at one time and you now have it—and I say this with all respect—that your Honor stole it from me, can it be inferred from that that I gave it to you, or can it be inferred from that that I sold it to you?

The Court: It is the obligation of the defendant to make the explanation of possession.

Mr. Ehrlich: Well, your Honor, that is what the Code says; that is, if you put it in his possession. But suppose, and as I argued to the jury, suppose I picked it up that way (illustrating), and I put it down (illustrating), is that in my possession, or does possession presuppose, as the law says, if my understanding is correct or my memory serves me, possession must be in conjunction with something else? It can be [405] possession for the moment by holding it that way (illustrating), but possession in order to come within the law must be possession in connection with something else. It can't be—you know the old alcohol and liquor cases where they tried to make two charges out of possession and transportation, and the Supreme Court of the United States many times went down the line and said, "Possession in order to be possession must be connected with something." And is there anything in this evidence that would show or from which it can be inferred that Stoppelli had this in his sole personal possession? There isn't a word in

the evidence. Is there any evidence here to show——

The Court: If you have something in your hand, haven't you got it in your possession?

Mr. Ehrlich: Possession, your Honor, for what? What does the law want us to do? The law says I am not to have in my possession untaxed narcotics, out of the seal, label, and so forth, and without prescription. There is no evidence here that in this envelope at the time that that print was put on there was, (1) heroin, or if it was heroin, was it improper or was it out of the original stamped package?

The Court: There is an inference from the circumstances——

Mr. Ehrlich: Very, very slight. In order to draw an inference, you have to approach it——

The Court: Isn't this the rational inference to draw: That if at the time the defendant had it in his possession there [406] was a powdery substance in it, and when captured by the officers it had a powdery substance, which consisted of heroin, isn't it rational to draw the inference that at the time the defendant had it in his possession it had heroin in it?

Mr. Ehrlich: That might be reasonably logical, your Honor, but the law breaks in and says we cannot come to a conclusion by possession only——

The Court: But, wait a minute, the law says if you have possession that it is sufficient, unless you can explain that possession. That is the statutory——

Mr. Ehrlich: Well, I will submit to your Honor, if I may have just a little time, I will submit some authorities on that which I think will bear out my position.

The Court: Well, I will interrupt at this time to take up another matter.

(Thereupon the Court took up another matter.)

(Recess.)

(The Court took up some other matters.)

The Court: Now you may proceed.

Mr. Ehrlich: Your Honor, I thought during the recess I would get a few cases on the point of the substantive offense resulting from conspiracy, but I should like to have your Honor's permission to have a day or two within which to put those together and let my motion stand for a couple of days until I can get those authorities for you. [407]

I merely wanted to add at this moment when your Honor indicated that you were thinking along the line that the heroin was in the package, we already know a certain percentage of it was not heroin at all, it was some kind of sugar—I think it was called sugar milk, or something like that, as I recall it now, so it wasn't all heroin, so that the inference must be limited at least to the extent of excluding the sugar milk, and I should like, your Honor, if I may, several days in which to get those cases for you on that point.

The Court: I will hear from the other counsel for the defendants.

(Mr. Dunning and Mr. Kernes and Mr. Deasy thereupon made arguments in support of motions for new trial on behalf of their respective defendants, which motions for new trial were denied by the Court, and judgment and sentence as to the defendants Leeper, Ballard, Ingoglia, and McDonough was pronounced by the Court.)

The Court: As to the defendant Stoppelli, that matter will be continued, granting leave to counsel for the defendant Stoppelli to furnish the memorandum of authorities which he asked leave to furnish. Can you furnish those within five days?

Mr. Ehrlich: Yes, your Honor.

The Court: And counsel for the Government may have five days within which to reply thereto, and the matter will then [408] stand submitted.

Mr. Ehrlich: I understand, your Honor, that memorandum is only to go to the substantive offense, you don't want the rest of the citations?

The Court: No, you have given your citations.

Mr. Ehrlich: Yes.

The Court: Counsel for the Government may wish to reply to those cases.

Mr. Karesh: I haven't got them.

Mr. Ehrlich: Well, I will file a short memorandum covering all of them.

Mr. Karesh: When will judgment be?

The Court: We will continue it to the 15th.

Mr. Ehrlich: I will get it in in sufficient time.

Monday, August 8, 1949

Mr. Karesh: I would like to be heard briefly. I did not file a written motion. I believe Mr. Ehrlich has some affidavits to file.

Mr. Ehrlich: May I take up the matter of the affidavit Your Honor, not by way of illustrating the length of time I have been in practice, but only to make a point, I have tried a great many conspiracy cases over the years and I have tried a great many other cases. This case, as the saying goes, has absolutely got me down. Following the conviction and the sentence I went to the County Jail. I discussed this matter at great length with the other defendants, who for the first time felt free to talk to me about it, and Ingoglia, who had the narcotics, told me and told everybody else there certain things: (1) that neither he nor anyone else at any time knew this man Stoppelli, had ever talked to him, had ever seen him——

The Court: That was all brought out at the trial, wasn't it?

Mr. Ehrlich: Yes, but this is Ingoglia and the defendants that took the stand had never seen him. Ingoglia also told the other defendants——

The Court: I wouldn't put too much credence in his statements. [410]

Mr. Ehrlich: ——that he bought these envelopes on which the one print was found in San Francisco; that the narcotics came here through a relative of his, and that he, together with one of his relatives, or several of his relatives, cut the nar-

cotics with this sugar that they use and packaged them in those envelopes which were purchased in a store on Market Street which I believe to be, from what he said, J. C. Penney's.

Now, Your Honor, if I thought for a minute that this man sitting here was part and parcel of this conspiracy you wouldn't hear me stand and argue to this Court to give this man a new trial. If I thought for one moment I had been misled in this matter I wouldn't be standing here on the second or third occasion appealing to Your Honor to consider this matter and grant this man a new trial.

I have talked to Mr. Dunning, one of the other attorneys, if you will recall, who wanted to come to see you and to relate what he had been told, what had been told to him by Ingoglia prior to the time of the trial, which is in line with what he has told me since that time and which bears out the defendant Stoppelli's story to me at the beginning, that he had nothing to do with this, that he had never seen these people, that this was not his print, couldn't have been, and all of that is borne out by the first time I appeared in this matter before Your Honor, when we went [411] —after we went to the Commissioners' office, none of these people knew this man. No one of the defendants told them he knew the defendant or talked to him.

I have never felt so burdened by a case as this one. I feel something is wrong in this case. I don't know what it is, I am frank to say. I don't accuse anyone of anything. I have got it so clearly

in my mind, the channels through which this thing developed. I have certain signposts to indicate to me that this is not the type of conspiracy we have run into over the years. There is something wrong about that print, Your Honor. What it is, I don't know. I haven't the print. But I believe in all fairness if there were going to be a mistake made I think, Your Honor, it should be made in favor of the defendant.

This man has a record for this, for narcotics. He had just gotten out of the penitentiary. He was in New York. He was charged in another indictment, which is on file here, with being in San Francisco on a particular day, and until I told Mr. Karesh he couldn't have been here because on the very day and very time he was supposed to be in San Francisco he was reporting in the office of the Probation Officer or Parole Officer in the city of New York. All of these things go to add up to something I don't understand. I feel a great moral obligation to this defendant because I believe him. I believed him when he told me the first time, "This is nothing new to me. If I did this I would tell you I did it. I didn't do it."

I have no way of directing an investigation be made of this matter. I don't know whether Your Honor has that power. But it seems to me, regardless of what Your Honor may rule (and I say that respectfully) I am going to ask the Attorney General's Office to go into this matter.

I have made mistakes, Your Honor, when I was guided by what I have up here; I have never made

a mistake when I feel down here that something is wrong. I feel sincerely that this man is not in on this thing, that he has never been in this thing, and I think he is entitled to an opportunity to show it. I didn't put him on the stand because I didn't feel that he could deny anything other than saying, "No, that isn't my print." He would have had to admit his record. I had hoped that this jury would consider what a conspiracy is and how it is to be proved, and what are the essentials, but the thing didn't work out.

I am satisfied that had he been tried on the original indictment filed by the Government charging him with being in San Francisco and committing this crime, had he stood trial on that allegation I am satisfied they would never have convicted him in a million years. It was only the fanfare of a conspiracy trial which puts this man in this position.

It may be said, of course, that "as ye sow so shall ye reap." I have no quarrel with sending a man to the penitentiary who has committed a crime. I have no defense of Stoppelli for the times he has been in the penitentiary, but I have every quarrel—rather, I have every concern for him at a time when I feel in my heart and my soul, when I feel that this man is not guilty of this crime.

I feel that Mr. Green, who testified, guessed a great deal, Your Honor. I feel that that man—and I have shown that photograph to people who are supposed to know something about it, who have questioned that print. Bear in mind, if you will, all

the other prints that are on there: Ingoglia's print, other prints, a woman's print. None of the persons that makes this stuff, nobody has found a thing except that tip there of this man. How could he— If he handled eleven packages, Your Honor, how could there be only that one little point of one? How could it be that if Mr. Green was showed by myself an inability to hold that package that way, he said, "Well, he held it this way. The weight was on the thumb," holding the weight of that package in order to make it fit. I don't accuse him of committing perjury. I say he made a mistake. I say he is not the capable expert that we were led to believe.

Certainly, if Stoppelli had been here, if there was some scintilla of evidence that he was in association [414] with these people, if there was some scintilla of evidence that he had aided these people or abetted them, or that they talked to him in New York, or that there was some correspondence, or just something we might infer from that, "well, he knew them; he has a record for this; this is his business, so to speak; we can infer that he was part of this group." But there is no such thing, Your Honor, indicating the man did.

Your Honor indicated a minute ago you didn't believe Ingoglia. I don't believe him, either, because he knew these facts before the trial and he should have testified to them, and I told him so, and Mr. Dunning and myself went down to see him and asked him if he wouldn't come up and testify and

give the names of the people that helped him cut that, and give us the name of the persons for whom he purchased, and give us the name of the person who delivered it, and while admitting that this man had nothing to do with it he refused to do anything about it.

Now, Mr. Dunning told me the names of the people involved. I haven't his permission to divulge them to Your Honor, although he did say that if Your Honor should desire it he would be pleased to tell you personally what he knew of the matter.

Now, I don't know what else to say to Your Honor except to tell you that I have already told you what I feel and what I believe and what I know. I have already argued [415] the law to you. I have three affidavits which I should like to make part of the record, my affidavit and those of those two boys; and I hope Your Honor believes these affidavits, they didn't tell the truth when they took the stand. I could see that. But I presume that they were advised to do what they did do and conduct themselves as they did. They are two boys.

I think—I believe Your Honor ought to give this man a new trial. Maybe we are making a mistake. Maybe we are not doing the right thing. Maybe it is not well that he have a new trial. But in any event—in any event, we will have done something here which is in line with the circumstances and the evidence, and if there is a mistake it should be in favor of this man, because Your

Honor knows that with his record even if you wanted to help him the record wouldn't very well permit you to do it. It is too big. The presumption is too great. The length of time is too long to say, "Well, I may make a mistake but this is it.

I have nothing I could add.

The Court: These affidavits you refer to, are they to the effect that these other defendants had no communication in any manner or form with Stoppelli?

Mr. Ehrlich: They are to that effect and to the effect that in a general conversation where they urged Ingoglia to tell the truth that he admitted all these things and refused [416] to do anything about it. They go further than what those boys testified to. Your Honor, I have my own affidavit of my conversation with him, what he said to me, which is in line with what these boys have in their affidavits. I can produce Mr. Dunning who, if Your Honor would talk to him, permit him to talk to you, would tell you many details.

The Court: He is simply going to relate what Ingoglia told him?

Mr. Ehrlich: He will relate also who retained him to defend Ingoglia and the connection between the person who retained him and Ingoglia. Your Honor, there is something wrong with this case and I don't know where it is, but I am going to stay with it as long as the good Lord lets me. I have Your Honor's permission to file these affidavits?

The Court: Yes, you may file them.

Mr. Karesh: May it please Your Honor, since counsel has gone outside the record I might make this observation with respect to the evidence in this case: One of the jurors came to see me about what happened afterwards—of course this was confidential—and he said that that jury took just one ballot to find Stoppelli guilty. I would like to say about Mr. Stoppelli, Mr. Stoppelli's counsel indicates he wouldn't do this thing. I think he did do it because he has gotten off very light in the past. A fifth time. He is a fifth time—a five time felon. The fifth [417] time the judge gives him three years, which he considers extremely fortunate, so Stoppelli says, "I can afford to stay in this racket."

I was reading a case, 164 Federal 2nd, United States of America vs. Perillo, and I notice for some reason that I can't understand, here is Mr. Stoppelli indicted and not tried. This is the same Stoppelli. This Stoppelli has been getting away with lots, but this time he slipped. If you are going to believe Ingoglia you have to believe Mr Green. And if a narcotics agent ever deliberately framed Mr. Stoppelli, if we wanted to frame Mr. Stoppelli we could have put a bigger frame on him. The expert was positive that is Stoppelli's print on that envelope.

I notice both Stoppelli and Ingoglia told the Probation Officer, "If I were guilty I would have plead guilty." I am too wise for that. Both said that: "I am going to plead guilty if I were guilty."

The statute says if you've got narcotics in your possession—and he had them in his possession if you believe the expert—and you must because it isn't contradicted—within thirty days. Mr. Stoppelli handled those narcotics in that envelope and his print is on that envelope, and you can't forge it without someone knowing. He asked them to examine the print to see if they could find prints. It is very difficult to determine to whom a single fingerprint belongs. It isn't like a whole [418] set. A single print you have to look at and go over laboriously, and that is what happened in this case, and when he found Stoppelli in his black book—and of course his name is there—and naturally the agent who knew the print finally came and he had the print of Mr. Stoppelli and treated it with silver nitrate solution they both matched the print of Mr. John Stoppelli.

I don't believe Ingoglia when he says he picked this stuff up in San Francisco and bought the envelopes in San Francisco. He has been sentenced to six years. He knows he isn't going to get parole. He hasn't anything to lose by filing this affidavit. He is going to show Mr. John Stoppelli.

The law is clear in the matter of narcotics. The Direct Sales Company versus the United States, 319 US 671, distinguishes that with the Falcone case cited by Mr. Ehrlich in his brief—

The Court: I am familiar with the Direct Sales Company case.

Mr. Karesh: It lays down the law, may it please the Court, that there is a distinction between those products which are inherently and in themselves contraband as distinguished, Your Honor please, from the *Falcone* case, where they say these exhibits and sugar could have been used for legitimate purposes. And may it please the Court, the

Supreme Court has said when you handle a large amount of narcotics you know they are going to be sold and re-sold and you are part of a conspiracy, part and parcel of a conspiracy. I think our case is much stronger than the case of *United States vs. Direct Sales Company* because there we have a legitimate manufacturer selling to a physician who had a right to buy and that had a right to re-sell, and the conspiracy arose out of the fact that they said, "You know it is going to be peddled illegitimately." I think *United States versus Bruno* laid down the same rule.

When you pick up the check in a narcotics case you are stuck. You've got the direct distinction between that which is inherently evil and inherently proscribed and that which is not. Heroin is proscribed, a proscribed drug, cannot be sold except that certain physicians who had large quantities on hand may get rid of it. But heroin is not sold.

This man is part and parcel of the conspiracy. The indictment does not say these men and these men alone conspired to violate the conspiracy statute. If we had alleged that we would have been in a very bad position, if we had said, limited the place of the conspiracy to Oakland. We say "other

places unknown and other people unknown.” In the case of—I forget the name at the moment—there was a reversal because it was limited to a certain place and the [420] government attempted to prove evidence of what happened on the other side.

I say Mr. Stoppelli handled twelve ounces of heroin and let it go out of his possession, and therefor he knew that that narcotics was going to be sold, and he was part and parcel of the conspiracy. You don’t have to know the members of a conspiracy to be part and parcel of it. The moment you turned those narcotics over to another person who then in turn—they were turned over to someone and got to Ingoglia—he is part and parcel of that conspiracy. I think that is the holding in the Direct Sales case, which I have cited. They had fingerprint experts there and the court said, “It is his fingerprint. Other evidence.”

We don’t have to pass on the proposition of whether or not a conviction could be sustained on the basis of a fingerprint alone. Of course there is evidence here the narcotics came from New York, the defendant came from New York, the narcotics were handled within thirty days. You have to consider the price, \$900.00, which is the wholesale price for the sale.

I ask Your Honor to sustain the conviction on all counts. There is nothing new before Your Honor that Your Honor did not have at the time the motion for judgment of acquittal was made on

behalf of the defendant Stoppelli. Your Honor has ruled on that, and I think correctly, and I again ask Your Honor to rule. As far as this defendant being framed, he hasn't been framed. He handled those narcotics and the evidence is clear and convincing or Mr. Ehrlich would have brought in his own fingerprint man.

We ask Your Honor to sustain the verdict on all counts.

The Court: Upon this conspiracy charge it appears to me that the strongest case that can be found in support of the Government's case in this Direct Sales Company which Mr. Karesh referred to. The Supreme Court in that case distinguishes the *Falcone* case by the nature of the commodity dealt in. In the *Falcone* case the conspiracy was to sell sugar and other commodities which were not restricted or incapable of further legal use except by compliance with rigid regulations such as apply to narcotics. The Court in the Direct Sales Company case brings that out very clearly, and referring to the *Falcone* case says:

"The commodities sold there were articles of free commerce, sugar, cans, etc. They were not restricted as to sale by order, form, registration or other requirements. When they left the seller's stock and passed to the purchasers hands, they were not in themselves restricted commodities, incapable of further legal use except by compliance with rigid regulations, such as apply to morphine sulphate. [422] The difference is like that between toy

pistols or hunting rifles and machine guns. All articles of commerce may be put to illegal ends. But all do not have inerently the same susceptibility to harmful and illegal use. Nor, by the same token, do all embody the same capacity, from their very nature, for giving the seller notice the buyer will use them unlawfully. Gangsters, not hunters or small boys, comprise the normal private market for machine guns. So drug addicts furnish the normal outlet for morphine which gets outside the restricted channels of legitimate trade.

“This difference is important for two reasons. One is for making certain that the seller knows the buyer intended illegal use. The other is to show that by the sale he intends to further, promote and cooperate in it.”

Now the Court in that cases uses this language, or language to this effect:

“Sale of restricted goods in unlimited quantities, stimulated by high pressure methods, working in prolonged cooperation with a physician’s unlawful purpose, is sufficient to show unlawful cooperation in unlawful plan and intent is therefore implied.”

That is at Page 1270. [423]

In the *instance* case we have no evidence of sale by this defendant to the other defendants, and from aught that appears the heroin might have been stolen from Stoppelli, taken from him without his consent. And possession of a small quantity may have been merely for the purpose of examination,

or for some other purpose that does not appear in the evidence. We do not know for what purpose he possessed it.

I think we must keep in mind the distinction that on a conspiracy charge there is no *prima facie* case to be inferred from the possession that there is a conspiracy. The inferences which the statute permit the jury to draw are not present in a conspiracy case. We have in this case no evidence of any relation or acquaintance or communication, written or verbal, between Stoppelli and any of the other defendants.

I am making these remarks as I feel that they pertain to the conspiracy count. I think the other two charges fall under a different category and merit different consideration. However, I do have very serious misgivings under the decisions, particularly under this Direct Sales Company case, that there is sufficient evidence to sustain a conviction of Stoppelli under the conspiracy count. Aside from the legal question, assuming the government's position on the conspiracy count is correct, I do feel that the [424] discretion with which the Court is clothed, and based on the motion for new trial, would be to favor Stoppelli as to the conspiracy count, because of the fact that the evidence is not sufficiently strong, and I feel that it is too vague and has too much uncertainty for me to permit the verdict thereon to stand.

The Court grants a new trial to the defendant upon the conspiracy count, the third count.

As to the other two counts, I feel they are in

an entirely different position. This defendant was entitled to a trial by jury. He received his trial by jury. There was substantial evidence in the case that he had possession of at least one of these envelopes. The evidence is sufficient to show he had possession within thirty days prior to the time the other defendants were apprehended and the narcotics recovered by the officers. There is evidence that I think is substantial that there was a substance in this envelope when it was in Mr. Stoppelli's possession.

I have had several letters from Mr. Stoppelli's relatives, including his wife, protesting his innocence. I have given the matter considerable consideration. It was a matter for this jury to determine. I am not in a position to say that this evidence is not sufficient to justify that jury coming to its conclusion. The evidence was sufficient [425] to justify the jury concluding this defendant had possession of these narcotics, or at least a part of them. In view of the fact that he did not see fit to take the stand and deny it, or make any explanation, I don't think I am in a position to say that he is not guilty. To say he is not guilty I am obliged to say his fingerprint was not on this envelope, a thing he did not deny at the trial of the case. I am obliged to say Mr. Green was utterly and entirely mistaken. He testified that out of millions of fingerprints there has only been one known case where two fingerprints were the same, and in that instance they were twins. It has become recognized as quite an exact science that if we find two finger-

prints the same, that the same individual made the two prints.

In view of the fact that the statute, or the statutes, are couched in the language they are, Congress in its wisdom has decided the statute should be strengthened for the purpose of making the laws more effective to stop this traffic and the apprehension and conviction of those engaged in it. When we go beyond the record, as both counsel have done, we find a man who has been heretofore convicted of criminal offenses, including narcotics; and that at the very time these transactions were on he was not in jail, he had gotten out of jail. If we are going to conjecture as to what he was doing in the meantime, it is [426] probable to surmise he went back to the activities he had theretofore been engaged in, in view of the fact, particularly, that we find his fingerprint upon this envelope.

The motion for new trial as to the first and second counts are, and each of them is, denied. Is the defendant ready for sentence?

Mr. Ehrlich: May I ask the Court at this time that 31866-H— Have you any objection to dismissing it?

Mr. Karesh: No, I have no objection to dismissal of the original indictment.

The Court: Is that pending here before me?

Mr. Karesh: No, that was before His Honor, Judge Harris. I presume we might have to make that motion before him. I have no objection. This indictment superceded it and we presented the conspiracy.

Mr. Ehrlich: I think that was all transferred to Judge Lemmon's court at the time the matter first came up.

Mr. Karesh: I think so, your Honor. There is also 31754-H, the original indictment on another four defendants, that is still outstanding.

The Court: It is your motion, then, that the indictment in each of those cases you have referred to be dismissed?

Mr. Karesh: I would have to write the Attorney General [427] for permission. I am sure he will grant it. The Court on its own motion, or on the motion of the defendant, could grant it. But if I were to move for it I would have to write Washington.

The Court: Well, you better contact Washington.

Mr. Karesh: All right.

Mr. Ehrlich: We will just reserve that motion.

Mr. Karesh: I will write Washington.

The Court: Is the defendant ready for sentence, and if he is, has he any statement to make before sentence is pronounced? Is there any further information he cares to give?

The Defendant: Your Honor, I am innocent of this crime.

The Court: It is the judgment and sentence of the Court that the punishment upon the first count, the defendant be imprisoned for a period of five years; and judgment and sentence of the Court that the punishment upon the second count be imprison-

ment for a period of six years. It is the judgment of the Court that these two sentences just pronounced are to run concurrently, that is, one with the other.

Mr. Karesh: There is a mandatory fine on the second count, your Honor.

The Court: On the second count there will be a fine as against the defendant of \$100.00. [428]

Mr. Ehrlich: Your Honor, may we first have a stay of execution of the judgment for about a week? My reason for asking that is that I am going to ask the Court to fix bail on appeal in this matter.

The Court: You may have a stay.

Mr. Ehrlich: Would your Honor fix bail on appeal?

Mr. Karesh: We will oppose it, your Honor. Excuse me.

Mr. Ehrlich: I want to say that this defendant, one, came here voluntarily; two, he comes from a fine family in the city of New York. This man has no place to run and he couldn't run if he wanted to.

The Court: How much is the bail he has now?

Mr. Ehrlich: About—He put up \$7500.00.

Mr. Karesh: Originally the Grand Jury set bail at \$20,000.00. The Commissioner in New York, not at our request, reduced it to \$3000.00, then there was some agreement to surrender him, or return him—Anyway, it was stipulated the bail would be \$7500.00. But I don't feel there is any substantial

question involved on the substantive count and I don't think he is entitled to bail or should be granted bail. He might become a fugitive.

Mr. Ehrlich: Your Honor, this man comes from a very reputable family. Of course that doesn't justify him in any way, but his wife was out to see me and I talked to the family maybe once or twice a week. I was on the verge of [429] saying I would guarantee his appearance, but obviously I can't cover the United States; but I am satisfied, morally satisfied, this man will be here to answer to any—at any time that the Court desires. He could have run before. He came here voluntarily. He could have disappeared before if he was going to run, and I say this man will be here. Your Honor, fix a reasonable bail which is possible for this family to raise.

The Court: I will give this further consideration. I would like to speak to the Probation Officer in connection with that matter before I rule, so I will take that under advisement.

CERTIFICATE OF REPORTER

I, Clarence F. Wight, Official Reporter, certify that the foregoing 430 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ CLARENCE F. WIGHT,

[Endorsed]: Filed Oct. 10, 1949. [430]

[Endorsed]: No. 12373. United States Court of Appeals for the Ninth Circuit. John Stoppelli, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 6, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals,

For the Ninth Circuit

No. 12373

JOHN STOPPELLI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD REQUESTED BY APPELLANT

Comes now the defendant and appellant, John Stoppelli, and hereby makes the following statement of points on which he intends to rely in this appeal.

[Title of Court of Appeals and Cause.]

AMENDMENT TO STATEMENT OF POINTS
ON WHICH APPELLANT INTENDS TO
RELY

Comes now the Appellant John Stoppelli and amends his statement of points on which he intends to rely in this appeal by adding thereto the following:

4. That the proper venue and place of trial for the substantive offenses charged against this defendant was the Southern District of New York and not the Northern District of California.

Dated this 18th day of October, 1949.

/s/ J. W. EHRLICH,

Attorney for Appellant.

Receipt of a copy of the foregoing amendment is hereby admitted this day of October, 1949.

By /s/ JOSEPH KARESH,

Asst. U. S. Attorney.

[Endorsed]: Filed Oct. 19, 1949.